

No. 13037

United States
Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

VS.

ROGUE VALLEY BROADCASTING CO., INC.
(KWIN),

Respondent.

Transcript of Record

Petition to Enforce an Order of the
National Labor Relations Board

FILED

JAN - 1 1952



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-113

In the Matter of
ROGUE VALLEY BROADCASTING CO., INC.,
(KWIN)

and

LOCAL No. 49, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, AFL

COMPLAINT

It having been charged by Local No. 49, International Brotherhood of Electrical Workers, AFL, that the Rogue Valley Broadcasting Co., Inc., operating Radio Station KWIN at Ashland, Oregon, hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 61 Stat. 136, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Nineteenth Region, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges as follows:

I.

Rogue Valley Broadcasting Co., Inc., is and has been a corporation duly organized and existing by

virtue of the laws of the State of Oregon, and is and has been licensed to engage in business in the State of Oregon.

II.

At all times mentioned herein, Respondent has been and is now operating Radio Station KWIN, the principal office and place of business of which is in Ashland, Oregon. It receives communications, intelligence and information by means of instrumentalities of interstate commerce and thereafter transmits the same as its broadcast programs. Its total annual income is about \$60,000, of which 2 per cent is derived from advertising agencies in states other than Oregon. The Company pays about \$4,000 a year to organizations located outside Oregon for the use of music, transcriptions, and recordings. The station is located about fifteen air miles from the border between Oregon and California.

III.

Pursuant to a consent election agreement and a Board conducted election, Local No. 49, International Brotherhood of Electrical Workers, AFL, was, on September 7, 1949, certified by the Board as the exclusive representative for purposes of bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment of the employees petitioned for in 36-RC-320.

IV.

Local No. 49, affiliated with the International Brotherhood of Electrical Workers and with the

American Federation of Labor, hereinafter called the Union, is a labor organization as defined in Section 2(5) of the Act.

V.

On or about September 2, 1949, Respondent discharged and has ever since refused to reinstate its employee, Ralph S. Click, because of his membership in and activities on behalf of the Union.

VI.

By the acts and conduct described in the foregoing paragraph, and by interrogating its employees concerning their purposes and activities in advocating, supporting, and joining the Union; by cautioning said employees against engaging in such activity; by the act described in Paragraph V, above, and by other and similar acts and conduct, Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

VII.

By the acts described in Paragraph V, Respondent has discriminated and is discriminating in regard to the hire and tenure of employment, and has discouraged and is discouraging membership in the Union, and thereby has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(3) of the Act.

VIII.

By the acts and conduct described in Paragraphs

V and VI, Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

IX.

The acts and conduct described in Paragraphs V and VI, occurring in connection with its operations described in Paragraphs I and II, have a close, intimate, and substantial relation to trade, traffic, and commerce in the several states of the United States, and tend to lead to labor disputes which burden and obstruct the free flow of commerce.

X.

The acts and conduct of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Nineteenth Region, issues this Complaint against Rogue Valley Broadcasting Co., Inc., (KWIN), Respondent herein.

Dated June 6, 1950.

[Seal] /s/ THOMAS P. GRAHAM, JR.,
Regional Director, National Labor Relations Board,
19th Region.

[Admitted in evidence as General Counsel's Exhibit No. 1-D.]

[Title of Board and Cause.]

ANSWER TO COMPLAINT AND
MOTION FOR DISMISSAL

Comment

That the position of the Chief Engineer at Station KWIN at Ashland, Oregon, was and is now a supervisory post within the meaning of Sec. 3(11) of the National Labor Relations Act as amended by the Taft-Hartley Act of 1947.

That the said Ralph Click was a supervisor within the meaning and intent of the law now in effect and that included in his duties as supervising engineer for Station KWIN, named in this complaint, was the right to hire and fire as well as the right to recommend for hiring and firing and having general supervision over the duties of three engineer-announcers of the Station.

That on December 31, 1947, the said Ralph Click did actually use his authority to fire Marion B. Maston and his right to hire or fire in the absence of the station manager had never been rescinded.

That except for the fact that the supervising engineers do work occasionally with the tools and do stand watch at the smaller stations, they would not be entitled to membership in the Union and further that any and all actions of such supervisors could and would be found to be acts of Management if they had attempted to coerce or intimidate employees in their rights to join or not join a Union.

Further, that except for the Bargaining Election in this case being held on a consent basis along with two other Radio Stations in this vicinity, this question of supervisors might have been determined, previous to this date.

Motion

Inasmuch as the Employer in this case was only exercising his prerogative in making changes in the supervisory staff of Radio Station KWIN, as might regularly be the case in any business institution, among management personnel, we believe this matter is beyond the jurisdiction of the Labor-Management Act of 1947,

Therefore, we must ask that the Complaint in this case be dismissed on the ground that the man in question is a supervisor within the meaning of the act and therefore outside the jurisdiction of the National Labor Relations Board.

June 15, 1950.

Respectfully submitted,

/s/ ALFRED P. BLAIR,

Representing Industry Council of Medford, Oregon,
and Radio Station KWIN, one of its Members.

[Admitted as General Counsel's Exhibit No. 1-F.]

[Title of Board and Cause.]

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed by Local No. 49, International Brotherhood of Electrical Workers, AFL, herein called the Union, the General Counsel of the National Labor Relations Board,¹ by the Regional Director of the Nineteenth Region (Seattle, Washington), issued a complaint dated June 6, 1950, against Rogue Valley Broadcasting Co., Inc., (KWIN), Ashland, Oregon, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act. Copies of the charges, complaint, and notice of hearing were duly served upon the Respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that the Respondent: (1) On or about September 2, 1949, discriminatorily discharged and thereafter refused to reinstate Ralph S. Click, because of his membership in and activities on behalf of the Union, and (2) interrogated its employees concerning their purposes and

¹The General Counsel and his representative at the hearing are referred to as the General Counsel. The National Labor Relations Board is herein called the Board.

activities in advocating, supporting, and joining the Union, cautioned its employees against engaging in such activity, and by these and other similar acts and conduct interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act. The complaint alleged that by the foregoing conduct the Respondent engaged in violations of Section 8 (a) (1) and (3) of the Act.

Thereafter, the Respondent filed an answer and motion to dismiss. The answer, further elaborated at the outset of the hearing, denied that the Respondent had engaged in any unfair labor practices alleged in the complaint and affirmatively alleged that Click was a supervisor. The Respondent accordingly moved that the complaint be dismissed.

Pursuant to notice, a hearing was held on August 22, 1950, at Medford, Oregon, before Frederic B. Parkes, II, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the outset of the hearing, the Respondent filed another motion to dismiss on the ground that the Respondent was not subject to the Board's jurisdiction. This motion and that contained in the Respondent's answer were denied without prejudice to their subsequent renewal. At the conclusion of the hearing, the undersigned granted a motion by the General

Counsel to conform the pleadings to the proof as to dates, spelling, and minor variances. Ruling was reserved upon the Respondent's motion to dismiss the complaint's allegations that the Respondent had engaged in violations of Section 8 (a) (1) of the Act. The motion is disposed of in accordance with the findings of fact and conclusions of law hereinafter made.

Upon the conclusion of the hearing, the undersigned advised the parties that they might argue before, and file briefs or proposed findings of fact and conclusions of law, or both, with the Trial Examiner. The parties waived oral argument. Thereafter, the Respondent and the General Counsel each filed a brief with the undersigned.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of the Respondent

Rogue Valley Broadcasting Co., Inc., an Oregon corporation, with its principal office and place of business at Ashland, Oregon, is engaged in the operation of Radio Station KWIN. The Respondent's station is at Ashland, Oregon, 15 miles from the California border. In the operation of its radio station, the Respondent receives communications, intelligence, and information by means of instrumentalities of interstate commerce and thereafter transmits the same as its broadcast program. The

Respondent broadcasts radio signals in interstate commerce and uses the facilities of the Pacific Telegraph and Telephone Corporation in broadcasting. Two programs, amounting to a total broadcast time of 30 minutes a day, 6 days a week, originate in Los Angeles, California. The cost for these programs paid to organizations located outside the State of Oregon, is \$2,500 annually. Approximately 3 to 3½ per cent of the Respondent's broadcasts are remote broadcasts, utilizing lines of telephone companies. The annual purchases of the Respondent total approximately \$5,000. Its total sales of advertising range between \$50,000 and \$60,000 a year. Most of the Respondent's sales of advertising is to local concerns; more than 50 per cent of such advertisements are for goods manufactured outside the State of Oregon. The Respondent operates under a license and regulations of the Federal Communications Commission. A monthly frequency check is made with a station at Point Reyes, California. Upon the basis of the foregoing, the undersigned finds, contrary to the Respondent's contentions, that the Respondent is engaged in commerce within the meaning of the Act.²

²W.B.S.R., Inc., 91 N.L.R.B. No. 110. See also Veterans' Broadcasting Company Radio Station KNUZ, 87 N.L.R.B. No. 33; Joe V. Williams, Jr., et al., 85 N.L.R.B. 752; Nebraska Broadcasting Company, Inc., 85 N.L.R.B. 694; Central Broadcasting Co., 81 N.L.R.B. 422; Western Gateway Broadcasting Corporation, 77 N.L.R.B. 49.

II. The organization involved

Local No. 49, International Brotherhood of Electrical Workers is a labor organization affiliated with the American Federation of Labor, admitting employees of the Respondent to membership.

III. The unfair labor practices

A. The supervisory status of Ralph S. Click

Before detailing the course of events which lead to the discharge of Click, it will be helpful at the outset to consider the Respondent's affirmative defense in respect to the termination of Click's employment; namely, that Click was a supervisor and accordingly that his discharge was not violative of the Act.

Exclusive of the station manager, admittedly a supervisory employee, the Respondent employed nine employees in four departments, as follows:

1. The engineering and announcing department employed Ralph Click, Charles Fields, Philip George, and Donald Smith, who held licenses as radio engineers from the Federal Communications Commission, hereinafter called the F.C.C. Click's position was termed chief engineer.

2. The program department consisted of one full-time employee, Don Berg, and Charles Fields who worked part of the time in the department as its program director, as well as serving as an announcer and engineer as above mentioned.

3. The commercial department embraced three employees.

4. The "front office" was comprised of one employee who served as a receptionist and stenographer.

As chief engineer, the primary responsibility of Click was the maintenance and operation of the station's equipment. Like the three other employees of the engineering and announcing department, he worked as an announcer and engineer-operator on a regular shift. He instructed employees in their duties and in their operation of the equipment and directed repairs to the equipment, performing physical labor himself in such maintenance.

Click made out work schedules for the employees in the engineering and announcing department, but before the schedules became effective they were subject to the approval of the station's manager, Edward P. Barnett. Click had no authority to authorize employees to work overtime without first obtaining the approval of Barnett. Although Click was authorized to make purchases of minor maintenance supplies, such as tube replacements, he had to obtain the approval of Barnett for major purchases.

Click received the same salary as Charles Fields, a nonsupervisory employee of the engineering and announcing department, and their salaries were between \$30 and \$50 more than the other two employees of the department. According to Click's credible and undenied testimony, he did not know

the amount of the salaries of the other employees of the department and had no authority to give such employees pay increases.

Applicants for positions were interviewed by Barnett and not by Click. Although on occasion Barnett sought Click's opinion in regard to applicants for positions, Barnett did not effectuate Click's suggestions in these matters. On one occasion, Click recommended that Barnett discharge an employee; and on another, he protested the hiring of an applicant. His recommendations were not followed.³

In Barnett's absence, his duties were assumed by Lane Bardeen, commercial manager of the station. In December, 1947, in the absence of Barnett's predecessor as station manager, Click discharged an announcer-engineer who appeared for work in a state of intoxication. At that time, it appears that in the absence of the station manager or in emergency situations, Click had authority to hire and discharge employees. Barnett denied that such authority had been revoked. Click testified, however, that he did not have the same authority after Barnett became station manager, that when Barnett left on a trip shortly after becoming manager, he informed Click "that Mr. Bardeen was in charge of the station," and that shortly after Barnett became

³These findings are based upon the credible testimony of Click. For the reasons hereinafter indicated, Barnett's testimony that Click had the authority to recommend the hiring of employees and that "The occasion never came up when his recommendation was different than mine" is not credited.

manager, Click told him that he was going to discharge an employee who in Click's opinion was unsatisfactory, but Barnett replied that "he would do all the hiring and firing at the station" and declined to discharge the employee.

Click's testimony was, in effect, corroborated by the position taken by Barnett at a conference with Roy F. Renoud, business representative of the Union, and a field examiner of the Board on August 29, 1949, prior to the conduct of a consent election. During the conference, the field examiner inquired as to the Respondent's position as to the supervisory status of Click. Barnett replied that "Click's position as chief engineer, in compliance with Federal Communications regulations was to see that the equipment was maintained. He had no power to do anything else as laid out by the Act as a supervisory employee" and that Click should vote in the election.⁴ His ballot was not challenged.

Upon the entire record and his observation of the witnesses, the undersigned credits the testimony of Click and finds Barnett's testimony unworthy of credence. The undersigned further finds that Click was not a supervisory employee within the meaning of the Act⁵ and that the record supports the following description made by Click of his job:

⁴The findings as to the preelection conference are based upon the credible and uncontroverted testimony of Renoud.

⁵Louis G. Baltimore, 57 N.L.R.B. 1611; Radionic Transformer Company Not. Inc., 70 N.L.R.B. 1186; Radio Station KTBS, Inc., et al., 90 N.L.R.B. No. 218.

“* * * at a large station like KNX in Los Angeles, for example, the chief engineer is the next man to manager. In a small station, like KWIN, the chief engineer is merely a glorified mechanic. I mean by that, he’s really the chief technician. The term engineer is a misnomer.”

B. Advent of the Union; interference, restraint, and coercion

In July, 1949, employees of a radio station in Medford, Oregon, expressed an interest in self-organization to Roy F. Renoud, business agent of the Union, and Renoud came to Medford to consult with them. The latter also made arrangements for Renoud to meet employees Click and Fields of the Respondent’s station. After discussing the Union with Renoud, the same evening Click and Fields signed authorization cards and applications for membership in the Union. Renoud gave them two application cards in the event the other two announcer-engineers of the Respondent’s station desired to join the Union. Click subsequently succeeded in enlisting the membership of employee Smith in the Union and mailed his application for membership to Renoud.

Upon receipt of Smith’s application, Renoud sent the following letter to the Respondent on July 25, 1949:

This is to advise you that Local 49, International Brotherhood of Electrical Workers, represents a majority of your employees and we are filing as of this date with the National

Labor Relations Board a petition asking for recognition, as directed by Section 9 (c) (1) of the Labor Management Act of 1947.

We would like to know your position in regards to recognizing Local 49 of the I.B.E.W. as the collective bargaining agency for all of your broadcast technicians and announcers employed in your station. Any discharges or attempts to coerce or intimidated (sic) will be viewed as an unfair labor act and such steps will be taken as directed by the Labor Management Act of 1947. * * *

The day Barnett received the above-quoted letter from Renoud, Barnett summoned Click to Barnett's office, and, according to the credible testimony of Click, the following conversation ensued:

"[Barnett] asked me first what I thought about this union deal, and I told him I thought it would be a good thing for the employees, and he said that anyone 'who is not satisfied here, can quit. We don't want any damned union around here. They leave a very bad taste in my mouth, and it would if you joined the union behind my back.' This continued for some time, very repetitious. Obviously, the man didn't like the idea of our joining the union. I told him that the union had made no demands on him and I didn't intend to make any demands on the station. I also suggested they wait until demands were made before he started

jumping too far to conclusions. * * * He said it left a very bad taste in his mouth. He repeated that a number of times and finally he said he wouldn't rest until it died."

About August 19, 1949, Manager Barnett asked employee Fields what the latter "thought about the union." When Fields stated he was in favor of the Union, Barnett said that "he hoped that [Fields would] keep [his] views with the station and their ideas."

About the same time, or a few days later, Barnett asked employee Donald E. Smith what the latter "thought of the union" and how he would benefit by being a member of the Union. Barnett further stated that "he didn't feel the station could afford another pay raise at that time" and that Smith would have to make up his "own mind as far as the union vote was concerned."

Shortly thereafter, Barnett brought a letter to Smith from the Respondent's counsel. The latter advised the employees, according to Smith, that "if we [joined the Union] it would be turning our powers to bargain over to the Portland local and we wouldn't have any say in the union at all. The people up there would make the laws and we would have to abide by them." During this conversation, Barnett told Smith that if the latter "voted against the union [he] wouldn't have anything to fear from Mr. Click because he wouldn't be there."

About the same time, Barnett inquired of em-

ployee Philip R. George as to his sentiments in regard to the Union.⁶

On August 29, 1949, pursuant to the terms of a consent-election agreement, the Board conducted an election among the employees of the engineering and announcing department to determine whether they desired to be represented by the Union for the purposes of collective bargaining. The Union won the election, and on September 7, 1949, was certified as the statutory representative of the employees of the engineering and announcing department.

Upon the entire record, the undersigned concludes and finds that by (1) Barnett's inquiries of the employees in regard to their sentiments as to the

⁶The findings in this and the preceding four paragraphs are based upon the credible testimony of Click, Fields, Smith, and George. Their testimony was not specifically denied by Barnett. The latter admitted that he inquired of the employees in regard to their views as to the Union and informed them that the Respondent could not afford to grant them a wage increase. Barnett testified that he informed the employees that these opinions were his own, that "their opinion was as good as" his, and that he "made it very clear that [he] wasn't interested in how their vote was coming out. That was up to them, one thing that should be decided in their own minds." He denied generally that he attempted to intimidate any employees in connection with the consent election. Upon the entire record and his observation of the witnesses, the undersigned credits the testimony of Click, Fields, Smith, and George and finds Barnett's testimony unworthy of credence to the extent that it is at variance with the testimony of the witnesses found to be reliable.

Union and in respect to the benefits which they hoped would ensue from affiliation with the Union, (2) his announcement to employee Smith, following such inquiries, that the Respondent could not grant an increase in pay at that time, (3) his statement to Click after such inquiries that dissatisfied employees "can quit. We don't want any damned union around here" and that the union activities of the Respondent's employees "left a very bad taste in his mouth * * * he wouldn't rest until it died," and (4) his observation to employee Smith that if the latter "voted against the union [he] wouldn't have anything to fear from Mr. Click because he wouldn't be there," the Respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 8 (a) (1) of the Act.

C. The discriminatory discharge of Ralph Click

1. Sequence of events

Click, who had many years of varied experience in the radio engineering field, entered the Respondent's employ on February 4, 1947, as an announcer-engineer, when he was hired by Robert Reinholdt, who at that time was manager of the Respondent's radio station, to assist in the rebuilding of the station following a disastrous fire of the preceding December. On March 9, 1947, the station resumed operation. In August, 1947, Click became chief engineer. In September, 1948, Reinholdt left the Respondent's employ and Barnett succeeded him

as station manager. Click continued as chief engineer after the change in managers.

As noted above, Click and employee Fields launched the Union's organizational campaign among the Respondent's employees and Click enlisted the membership of another employee in the Union and solicited the membership of two other employees. As heretofore found, Manager Barnett interrogated Click in regard to his union activities and sympathies and told him that dissatisfied employees could quit, that "we don't want any damned union around here. They leave a very bad taste in my mouth, and it would if you joined the union behind my back," and that the Union "left a very bad taste in his mouth * * * he wouldn't rest until it died."

The Union won the consent election held on August 29, 1949. On September 2, 1949, Click was summoned to Barnett's office and was summarily discharged without prior warning. When Click inquired as to the reasons for his dismissal from the Respondent's employ, Barnett informed him that he was inefficient, uncooperative, incompetent, unqualified, and dishonest, that he was a trouble maker and had caused dissension among the employees, keeping them in such a state of turmoil that they were unable to do their work, that Click had talked to members of the Board of Directors "behind [Barnett's] back," and that Click had sought employment elsewhere.⁷ Barnett requested

⁷The findings in this sentence are a synthesis of the mutually reconcilable testimony of Click and Barnett.

that Click obtain his tools and leave the station within 20 minutes. Click testified credibly and without contradiction that Barnett then "ran into the control room, grabbed my license off the wall before I was able to get to it, took it into the office and was in such a haste he couldn't wait to take the padding off the back to get at my license that he took a knife and cut it out" of its frame. On the back of the license, which had been issued to Click by the F.C.C., Barnett wrote the word, "unsatisfactory," in the space allotted to indicate the radio station's endorsement as to the services of the license holder.⁸

2. Reasons for Click's discharge advanced
by the Respondent prior to the hearing

Immediately after his discharge, Click informed Business Agent Renoud that the Respondent had terminated Click's employment. A few days later, Renoud telephoned Manager Barnett, protested Click's discharge, requested his reinstatement, and asked for a statement of the basis for the discharge. According to the credible and uncontroverted testimony of Renoud, Barnett informed him that the reason for Click's discharge "was that he created dissension among the men and that he had not maintained the equipment properly." No mention

⁸Barnett admitted that the effect of such an endorsement was that Click "cannot become employed by another radio station unless they want to overlook the fact or didn't realize they were getting an unsatisfactory man."

of specific instances of such conduct on the part of Click was given and nothing was said by Barnett in respect to Click's alleged willful neglect of duties.

The record shows that in response to an inquiry by the F.C.C. in regard to the endorsement of unsatisfactory on Click's license, the Respondent gave the following reasons for such endorsement:

1. During the months of May and June, 1949, a Mr. Wallace C. Clark was employed at KWIN as a "man on the street" reporter. Mr. Clark used a wire recorder to record a daily program from the streets of the business district. For some unknown reason Mr. Click disliked Mr. Clark. As Chief Technician for KWIN it was the duty of Mr. Click to properly maintain the equipment used by Mr. Clark on his program. Nevertheless the equipment was constantly out of order in some fashion. Either the recorder itself was not in good operating condition or the wire cartridges used were being broken. Naturally Mr. Click blamed Mr. Clark for the trouble and constantly recommended that the man be discharged. It is true Mr. Clark was no technician, however he was fully capable of operating a wire recorder. Mr. Click admittedly disliked the man and stated to the management he would not cooperate in the maintenance of the equipment used by Mr. Clark.

2. On July 15th and 16th, 1949, KWIN did

a remote broadcast of the annual local rodeo. For the broadcast we were using two microphones. One was placed in the broadcast booth where the remote console and the Chief Engineer would also operate. The other microphone was placed about a hundred yards away to be near the judges' stand. There was a sportscaster at each mike. Mr. Click was engineering from the console in the booth. Sportscaster Ned Liebman was the man at the mike near the judges' stand. A few days prior to this Mr. Click had taken a dislike to Mr. Liebman because of some difference of opinion and had complained to the management about having the man in the employ. During the broadcast from the rodeo most of the action was to be described from the judges by Mr. Liebman, yet the broadcast from that point was practically lost because of poor control by the engineer. Mr. Click was perfectly capable of proper operation from the control booth yet during the times when Mr. Liebman was announcing the proper gain was ignored.

In a letter, dated November 10, 1949, to a field examiner of the Board, Barnett ascribed as the reasons for Click's discharge "incompetency and willful neglect of duty."

3. Respondent's position as to Click's discharge at the hearing

In respect to the background leading to Click's

discharge, Manager Barnett gave the following testimony:

“Well, I had been rather dissatisfied with the services of Click and his general attitude toward the station since I became manager. * * * However, even though I felt as though he was not the man that I myself would have hired originally, nevertheless I would not discharge a man unless there were specific reasons for discharge, but at the same time I would be watching rather closely to make sure that his operation was the type of operation that I wanted at the station. So, there were many things, such as personality differences and dissension in the station that was overlooked for a long time by myself, overlooked as far as the discharging of a man for it, but not overlooked in my own mind, as far as what my own opinion of the man and the discharge of his duties were.”

The specific incidents which were the reasons for Click's discharge were as follows, according to Barnett's testimony:

1. As referred to above in the reasons given the F.C.C. for the endorsement of unsatisfactory on Click's license, the initial incident occurred in May and June, 1949, in regard to the broadcast of a “man on the street” program by Wallace C. Clark. He used a wire recorder to record his interviews with people on the streets of the business district. During this period, an inordinate number of wire

cartridges in the equipment used by Clark was broken and Barnett lay the blame for such breakage to Click because "it was the job of the chief engineer to keep the equipment in good repair." However, Barnett admitted that he made no investigation to determine the cause of or the responsibility for the breakage of the cartridges.

2. Shortly after Barnett became manager, he made arrangements with a gasoline station so that Click might charge to the Respondent's account purchases of gasoline and oil used by Click in driving his personal car on business of the Respondent. About June, 1949, Barnett received a monthly statement for these purchases and noted that Click's purchases reached a rather large total. He summoned Click and inquired as to the nature and amount of the purchases. Click frankly admitted that some of his purchases of gasoline was for his personal use and stated that he had made these purchases because he believed that he was entitled to some reimbursement for gasoline and oil which he had used on the Respondent's business before Barnett became manager and instituted these credit arrangements. Barnett reprimanded him and then, according to Barnett's testimony, "dismissed him from the office at that time and let it go at that because, while actually I should have discharged him on the spot right at that time, I still thought, well, I'll think it over and see what kind of action I should take."

About June 23, 1949, Wallace Clark complained

to Barnett that the night previous, Click had ordered Clark from the station after 11 p.m., the hour the station ceased broadcasting. Clark inquired whether he might remain in the station and work after the closing hour. Barnett replied that Clark might do so. When Barnett questioned Click about the matter, Click stated that it had been a policy that "nobody of the station staff works after eleven o'clock." Barnett replied, "I don't believe you're correct in that assumption because anybody on the station staff, as long as they have work to do, anybody can work after eleven o'clock at night even though we go off the air at eleven o'clock." Click became angry and retorted, "From this date on, I'll never be responsible for the technical equipment of this station as long as that policy lasts." Barnett further testified that on the next day, June 24, 1949, "I decided I was going to discharge Ralph [Click] on * * * the following Monday," June 27, 1949.

On June 24, 1949, Barnett, according to his testimony, informed Mark S. Hamaker, president of the Respondent, of the decision to discharge Click.⁹ However, on June 26, 1949, Click became ill and underwent an emergency appendectomy operation. In view of this circumstance, Barnett was not disposed on June 27, 1949, to "discharge a man who was in the hospital" and determined "to wait until the man was out of the hospital and back on his feet" before discharging him. According to Bar-

⁹Hamaker's testimony corroborated that of Barnett on this conversation.

nett, he "intended to wait approximately thirty days, or whatever time it was that Click felt better. The exact date wasn't set after the one postponement on that particular Monday."

About a week later, Click returned to work. Shortly thereafter, according to Barnett, Hamaker stated that he had heard Click broadcasting on the Respondent's station and inquired as to the reason he was still in the Respondent's employ in view of Barnett's previously expressed intention of discharging Click. Barnett explained that Click had been ill and that his discharge had been postponed.¹⁰

Barnett gave the following explanation for his failure to effectuate the discharge of Click in July, based upon the above incidents occurring in May and June:

"And then the latter part of July, I received the notice from the I.B.E.W. that the employees—that they had—I guess they were signature cards that the employees had signed and that there would be an election held at the station later, and that any attempts to discharge a man would be held as an unfair labor practice, or words to that effect. * * * So, when I received that, the first thing I thought of was the fact that, well, I guess that ties my hands and I can't replace my chief engineer now. * * * I went to Mr. Hamaker, the President of the Corporation, and he recommended that

¹⁰Hamaker's testimony corroborated that of Barnett on this conversation.

I get in touch with the Industry Council, Mr. Pat Blair, and talk the situation over with him. * * * And I immediately told Mr. Blair of the situation, and the first thing I asked him was 'What shall I do in the case of our chief engineer?' And he said, 'Well,' he said not to discharge the man until after the election had been held, make sure it's a fair election, and 'After the election is held, why, as long as you have cause to discharge a man, why, then the man can be discharged.'" So, the election, it went through, and the election was held, and I discharged the man on the 2nd of September."

In view of Barnett's testimony that he determined to discharge Click the latter part of June, 1949, it would appear that the rodeo broadcast of July 15th and 16th, 1949, referred to as one of the reasons set forth above for the endorsement of unsatisfactory on Click's F.C.C. license, was not a significant factor in the incidents leading to Click's discharge. In respect to this matter, Barnett testified that his observation that the broadcast "was practically lost because of poor control by the engineer," namely, Click, was based upon Barnett's listening to the broadcast. He admitted, however, that he never discussed the matter with Click or with the announcers, Liebman and Seely.

4. Other evidence in respect to the above incidents; conclusions

Having set forth a summary of the evidence adduced by the Respondent in support of its contention that the discharge of Click was not violative of the Act but was made for proper cause, there remains for consideration other evidence in respect to these incidents and a resolution of the resulting conflicts in the evidence.

The testimony of employees Click, Smith, Fields, and Seely, who impressed the undersigned as reliable witnesses worthy of credence, establishes that the quality of Clark's on-the-street broadcasts was poor and that during the 3½-month period of his employ by the Respondent, an excessive amount of wire cartridges on the recorder operated by him was broken. Although Click had given Clark instructions in the proper operation of the wire recorder, it is clear that Clark did not follow such instructions and that the breakage of the wire cartridges was due to his improper operation of the recorder. The undersigned credits the testimony of these employees and in view of these findings, as well as the fact that Barnett admitted that he made no investigation to determine the cause for the breakage of wire cartridges, it is found that such breakage was due to Clark's inefficient operation of the equipment and that Barnett's reliance upon this incident as a reason both for the discharge of Click and for the endorsement of unsatisfactory on his license was without basis of fact.

As to the use of the gasoline credit card by Click

for his personal use, his testimony in regard to the incident was substantially in accord with Barnett's version set forth above. Barnett's testimony in regard to this incident is accepted as summarized above. It is noteworthy that following their discussion the matter "dropped" and Barnett "let it go at that."

In respect to the incident on June 23, 1949, when Click expelled Clark from the station after closing hours, Click's version, as follows, was considerably different from that of Barnett. After the station was rebuilt after the fire, a policy was established that no one would be permitted access to the building after closing hours but the manager, chief engineer, and watchman.¹¹ Employee George and watchman William Sellens had reported to Click that Clark had been in the station after closing hours and had attempted "to turn on some of the equipment after hours after we had left."¹² This action was in violation of the regulations of the F.C.C. One night after closing hours in late June,

¹¹Watchman William Sellens testified that such was the rule and that he had been informed of the rule by former manager Reinholdt. Click testified that President Hamaker instituted the rule. The latter denied that he had been responsible for such a rule. For the purpose of this Report, it is unnecessary to resolve this conflict in evidence as to the identity of the person promulgating the rule. The testimony of Click and Sellens in respect to the existence of the rule is credited.

¹²Sellens corroborated Click's testimony in this regard. Sellens also testified that he requested Clark to leave the station on this occasion.

1949, Click found Clark in the station and asked him to leave. The next day Barnett inquired of Click as to the reason he had expelled Clark from the station and Click replied that so far as he knew the rule that no employees but the manager, chief engineer, and watchman were to be allowed in the station after hours had not been rescinded and that he had had reports that Clark had attempted to turn on equipment after hours. Apparently, Barnett stated that Clark should be permitted access to the building after closing hours for Click admitted that he told Barnett that he would not be responsible as chief engineer for the technical equipment in the station if employees were allowed to remain after closing hours. Upon the entire record and his observation of the witnesses, the undersigned credits the testimony of Click, as corroborated by Sellens, in respect to this event and does not credit Barnett's version to the extent that it was at variance with that of Click.

In respect to the rodeo broadcasts of July 15 and 16, referred to in the Respondent's reply to the F.C.C.'s inquiry as to the endorsement of unsatisfactory on Click's license, employee Fields testified that he heard the broadcast and had no criticism to make of them and that the voice level of the announcers was the same. Liebman, according to Smith, had a tendency to wander from the microphone and to speak softly, thereby giving difficulty to the engineer in controlling the voice level. George testified that he heard no comments by

Barnett in regard to the rodeo broadcasts. Click testified that he had heard no criticism of these broadcasts. In view of the testimony of these witnesses, who impressed the undersigned as reliable and truthful, as well as Barnett's admitted failure to discuss the broadcasts with Click or the announcers, it is found that Barnett's testimony in regard to this event and his statement to the F.C.C. ascribing the rodeo broadcasts as a reason for the endorsement of unsatisfactory on Click's license, had no basis in fact. Barnett is not credited on this issue.

In conclusion, it is thus clear that the facts do not support two of the four reasons advanced, at various times, by the Respondent as the basis for its discharge of Click. That is, the breakage of wire cartridges in May and June, 1949, was due to the inefficiency and inaptitude of Clark and not Click and the rodeo broadcasts of July 15 and 16, 1949, were not "lost because of poor control" by Click. As to the third reason, the expulsion of Clark from the station after closing hours in June, 1949, Click's version of the incident has been credited and it has been found that his expulsion of Clark was based upon a rule, in existence since March, 1947, which prohibited access to the station after hours to all persons except the manager, chief engineer, and watchman. At the conclusion of Click's discussion of the incident and rule with Barnett when the latter stated that Clark should be permitted to remain after closing hours, Click stated that as chief engineer he would not be responsible for equipment in the station if employees

were allowed access to the station after hours. The Respondent argues that the position taken by Click in the matter constituted a willful neglect of duties inasmuch as one of his principal duties and responsibilities was for the condition of the station's equipment. The Respondent's argument is clearly without merit. In the undersigned's opinion, Click's statement was made (1) to support his advocacy of the theretofore existing rule forbidding employees access to the station after hours and (2) to absolve himself of any responsibility for damage to equipment or the station or for infraction of regulations of the F.C.C. resulting from the presence of employees in the station after hours and in the absence of Click. The fact that Click sought to define his responsibility for equipment of the station and for the station's observance of F.C.C.'s regulations to a period when the station was in operation cannot be said to be unreasonable or to be a willful neglect of duty on his part.

The remaining reason urged by the Respondent for Click's discharge involved his unauthorized use of a gasoline credit card for his personal use in June, 1949. Since both Barnett and Click both regarded the incident at an end following the former's discussion with and criticism of the latter, it seems improbable that this incident, occurring in June, was the motivating factor in the discharge of Click over 2 months later, in September. (The same improbability extends to the other reasons urged by the Respondent but rejected by the under-

signed as being without merit.) Barnett's somewhat ingenious, but unconvincing, attempt to relate Click's discharge in September to incidents occurring in June and to justify the more than 2 months' delay in making the discharge necessarily falls when considered in the light of another contention of the Respondent, namely, that Click was a supervisor. Thus, Barnett insisted that he determined to discharge Click late in June, to be effective on Monday, June 27, 1949. However, Click's sudden illness and operation on June 26 impelled Barnett to postpone the termination of Click's employment until such time as Click had recovered his health. Late in July, by which time Click had recuperated, the Union requested that the Respondent grant it recognition and warned the Respondent that "any discharges or attempts to coerce or intimidate will be viewed as an unfair labor act and such steps will be taken as directed by the Labor Management Act of 1947." According to Barnett, he was advised to delay the discharge of Click further until after the representation issue had been settled by an election. Consequently, on September 2, 1949, 4 days after the consent election, Barnett at last effected the release of Click from the Respondent's employ. Barnett's alleged reluctance to discharge Click during the pendency of the representation issue is not compatible with the Respondent's position that Click was a supervisor and that his discharge was not violative of the Act. If indeed the Respondent believed Click to be a supervisor

and, in fact, had cause to discharge him, it seems highly improbable that it would have postponed his discharge more than 2 months, pending the resolution of the representation question, since the discharge of a supervisor would not be violative of the Act or concern the representation issue. In view of this circumstance, as well as his impression of the witnesses, the undersigned does not credit Barnett's explanation for the delay in making the discharge of Click.¹³

That the reasons advanced for Click's discharge were mere pretexts to cover its illegal motivation is clear in view of the more than 2 months' interval existing between the incidents relied upon and Click's ultimate discharge in September, and also of the shifting reasons for the discharge advanced by the Respondent from time to time. Thus, in answer to the F.C.C.'s inquiry in regard to the endorsement of unsatisfactory on Click's license, the Respondent replied that the endorsement was based upon the incident involving Clark and the breakage of wire cartridges in May and June, 1949, and upon the rodeo broadcasts of July 15 and 16, 1949. Yet, at the hearing, Barnett testified that the reasons for Click's discharge encompassed the wire-cartridge incident, the unauthorized use of the gasoline credit card for personal use, and the expulsion of Clark from the station after hours in

¹³The same considerations impel the rejection of Hamaker's testimony elicited in corroboration of that of Barnett.

June, 1949. Barnett further testified that he determined to discharge Click on June 24, 1949, the day after their discussion about the latter incident, and obviously several weeks prior to the rodeo broadcasts on July 15 and 16. In addition, there was variance in the reasons advanced by Barnett to the Board and to the Union's business agent. Also, it is significant that Click was discharged without prior warning and that the reasons given him for his discharge were in general terms.

However, it seems clear that contained in those general reasons given Click and also Renoud was the motivating one which impelled the Respondent to terminate Click's employment; namely that he was a trouble maker and had caused dissension among the employees. The record amply supports the inference, which the undersigned makes, that Barnett's characterization of Click as a trouble maker and creator of dissension among the employees was based upon Click's union activities and membership, which were known to the Respondent in view of the small size of the station and Barnett's prompt interrogation of the employees after they evidenced interest in self-organization. Click was one of the two employees responsible for the self-organization of the Respondent's employees and actively lent assistance to the union's cause. Shortly after the employees signed applications for membership in the Union, Barnett interrogated Click and other employees in regard to their union activities and sympathies, told Click that dissatisfied employees could quit, and warned him that

"we don't want any damned union around here. They leave a very bad taste in my mouth, and it would if you joined the Union behind my back." Barnett further stated that the Union "left a very bad taste in his mouth * * * he wouldn't rest until it died." Indicative of the Respondent's motivation in the termination of Click's employment 4 days after the Union won the consent election was Barnett's statement to employee Smith, shortly before the election, to the effect that if Smith "voted against the union [he] wouldn't have anything to fear from Mr. Click because he wouldn't be there."

Upon the entire record, the undersigned concludes and finds that the Respondent discharged Ralph S. Click because of his membership in and activities on behalf of the Union and that the reasons advanced by the Respondent for his discharge are without merit and at most were a pretext to conceal its illegal motivation for his discharge. By thus discriminating against Click, the Respondent has violated Section 8 (a) (3) of the Act and has discouraged membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among

the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

The undersigned has found that the Respondent violated the Act by interrogating its employees concerning their union sympathies and activities, by making other coercive statements and threats to its employees, and by discriminatorily discharging Ralph S. Click on September 2, 1949. In view of these findings, it will be recommended that the Respondent take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent discriminated with respect to the hire and tenure of employment of Ralph S. Click, by discharging him because of his union membership and activities, it will therefore be recommended that the Respondent offer Click immediate and full reinstatement to his former or substantially equivalent position,¹⁴ without prejudice to his seniority and other rights and privileges, and make him whole for any loss of pay he may have suffered by reason of the Respondent's discrimination against him. Consistent with

¹⁴In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico*, Branch, 65 NLRB 827.

the Board's new policy in the method of computing back pay,¹⁵ it will be recommended that the loss of pay be computed on the basis of each separate calendar quarter, or portion thereof, during the period from the discriminatory action to the date of a proper offer of reinstatement. The quarterly periods, hereinafter called quarters, shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which he would normally have earned for each quarter, or portion thereof his net earnings,¹⁶ if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter. It will also be recommended that the Respondent make available to the Board, upon request, payroll and other records to facilitate the checking of the back pay due.

In view of the Respondent's discriminatory discharge of Click, and its other acts of interference,

¹⁵F. W. Woolworth Company, 90 NLRB No. 41.

¹⁶By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the Respondent, which would not have been incurred but for the unlawful discrimination and the consequent necessity of his seeking employment elsewhere. See *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See *Republic Steel Corporation v. N.L.R.B.*, 311 U.S. 7.

restraint, and coercion, there is danger that the commission of unfair labor practices generally is to be anticipated from the Respondent's unlawful conduct in the past. The undersigned will therefore recommend that the Respondent not only cease and desist from the unfair labor practices found, but also cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. The operations of Rogue Valley Broadcasting Co., Inc. (KWIN) constitute trade, traffic, and commerce among the several States within the meaning of Section 2 (6) and (7) of the Act.

2. Local No. 49, International Brotherhood of Electrical Workers, AFL, is a labor organization within the meaning of Section 2 (7) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Ralph S. Click, thereby dis-

couraging membership in a labor organization, the Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, the undersigned recommends that the Respondents, Rogue Valley Broadcasting Co., Inc. (KWIN), Ashland, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization of its employees, by discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire or tenure of employment or any term or condition of employment;

(b) Interrogating its employees in regard to their union sentiments;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain col-

lectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act.

(a) Offer to Ralph S. Click immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority or other rights and privileges;

(b) Make whole Ralph S. Click for any loss of pay he may have suffered because of the discrimination against him, in the manner set forth in the section entitled "The Remedy";

(c) Upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay and the right of reinstatement under the terms of these recommendations;

(d) Post at its station at Ashland, Oregon, copies of the notice attached hereto and marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region,

shall, after being duly signed by the Respondent's representative, be posted by it immediately upon receipt thereof, and be maintained by it for a period of at least sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(e) Notify the Regional Director for the Nineteenth Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report, what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated at Washington, D. C., this 10th day of November, 1950.

[Seal] /s/ FREDERIC B. PARKES,
2nd Trial Examiner.

Appendix A

Notice to All Employees
Pursuant to the Recommendations
of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in Local No. 49, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of our employees, by discriminating in regard to their hire or tenure of employment or any term or condition of employment.

We Will Not interrogate our employees concerning their union sentiments.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the National Labor Relations Act.

We Will Offer Ralph S. Click immediate and

full reinstatement to his former or substantially equivalent position without prejudice to any seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay suffered as a result of the discrimination.

All our employees are free to become, remain, or refrain from becoming or remaining, members of the above-named union or any other labor organization, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the National Labor Relations Act. We will not discriminate against any employee because of membership in or activity on behalf of any such labor organization.

ROGUE VALLEY
BROADCASTING CO., INC.
(KWIN)

.....,
Employer.

Dated.....

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof and must not be altered, defaced, or covered by any other material.

United States of America
Before the National Labor Relations Board
Case No. 36-CA-113

In the Matter of:

ROGUE VALLEY BROADCASTING CO., INC.
(KWIN),

and

LOCAL No. 49, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, AFL.

DECISION AND ORDER

On November 10, 1950, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the

¹Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.²

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Rogue Valley Broadcasting Co., Inc. (KWIN), Ashland, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local No. 49, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of its employees, by discharging and refusing to reinstate any of its employees or by discriminating in any

²However, in adopting the Trial Examiner's conclusion that the Respondent violated Section (8) (a) (1) of the Act, we do not rely on Barnett's statement to employee Smith that the Respondent could not afford to grant a pay increase at that time. See A. Kravitz & Company, 89 NLRB No. 192.

In addition, we do not adopt the Trial Examiner's statement that Barnett's alleged reluctance to discharge Click during the pendency of the representation proceeding was incompatible with the Respondent's position that Click was a supervisor. As noted elsewhere in the Intermediate Report, at the time of the election, the Respondent took the position that Click was not a supervisor. However, the Respondent's later position, in its answer and at the hearing, that Click was a supervisor is clearly incompatible with its position throughout the representation proceeding.

other manner in regard to their hire and tenure of employment or any term or condition of employment.

(b) Interrogating its employees in regard to their union sentiments; and threatening its employees with discharge or other economic reprisals because of their union affiliation or activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ralph S. Click immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Make whole Ralph S. Click, in the manner set forth in the section of the Intermediate Report

entitled "The remedy," for any loss of pay he may have suffered as a result of the Respondent's discrimination against him.

(c) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all pay roll records, social security payment records, time cards, personnel records and reports, and all other records necessary to an analysis of the amount of back pay due and the right of reinstatement under the terms of this Order.

(d) Post at its station at Ashland, Oregon, copies of the notice attached hereto and marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days

³In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., March 27, 1951.

JOHN M. HOUSTON,
Member,

ABE MURDOCK,
Member,

PAUL L. STYLES,
Member,

[Seal] NATIONAL LABOR
RELATIONS BOARD.

Appendix A

Notice to all Employees Pursuant to A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in Local No. 49, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of our employees, by discharging and refusing to reinstate any of our employees or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

We Will Not interrogate our employees in regard

to their union sentiments; or threaten our employees with discharge or other economic reprisals because of their union affiliation or activities.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

We Will offer to Ralph S. Click immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss of pay he may have suffered as a result of our discrimination against him.

All our employees are free to become, remain, or refrain from becoming or remaining, members of Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with

Section 8 (a) (3) of the Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or nonmembership in any such labor organization.

Dated:.....,

ROGUE VALLEY BROADCASTING CO., INC. (KWIN)

.....,

(Employer)

By,

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board
Nineteenth Region

Case No. 36-CA-113

In the Matter of:

ROGUE VALLEY BROADCASTING CO., INC.
(KWIN)

and

LOCAL No. 49, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, AFL.

Pursuant to notice, the above-entitled matter
came on for hearing at 10 o'clock a.m.

Before: Frederic B. Parkes, II, Esq.,
Trial Examiner.

Appearances:

HUBERT J. MERRICK, ESQ.,

Appearing on Behalf of the National La-
bor Relations Board.

A. P. BLAIR,

Appearing on Behalf of Rogue Valley
Broadcasting Co., Inc., the Respondent.

R. F. RENOUD,

Appearing on Behalf of Local Union No.
49, International Brotherhood of Electri-
cal Workers, the Union.

PROCEEDINGS

Mr. Merrick: If the Trial Examiner please, I would like to have this file marked for identification as General Counsel's Exhibit 1.

For the sake of the record, this exhibit consists of all of the formal papers filed in this proceeding to date and reflects the formal action that has been taken.

Would Respondent care to see it?

Mr. Blair: We are satisfied.

Mr. Merrick: For the record, General Counsel's Exhibit consists of the following documents:

1-A is the Affidavit of Service of the Charge.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-A for identification.)

Mr. Merrick: 1-B is the original charge filed by the charging union, Local No. 49 of the International Brotherhood of Electrical Workers.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-B for identification.) [6*]

Mr. Merrick: I-C is the Notice of Hearing, setting the hearing for the Jackson County Court House at Medford.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-C for identification.)

*Page numbering appearing at top of page of original Certified Reporter's Transcript.

Mr. Merrick: 1-D is the Board's or the General Counsel's complaint issued in this matter.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-D for identification.)

Mr. Merrick: 1-E is an Affidavit of Service of the complaint, notice of hearing and charge.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-E for identification.)

Mr. Merrick: 1-F is a document filed by the Respondent, entitled "Answer to Complaint and Motion for Dismissal."

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-F for identification.)

Mr. Merrick: 1-G is a notice of change in place of hearing from the Court House to the Old Council Chambers, City Hall, Medford.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-G for identification.)

Mr. Merrick: 1-H is the Affidavit of Service of this notice of change in place of hearing.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-H for identification.) [7]

Mr. Merrick: Do the parties care to examine this?

(No response.)

Mr. Merrick: I would like to offer General Counsel's Exhibit 1 in evidence.

Trial Examiner Parkes, II: Is there any objection to the offer?

(No response.)

Trial Examiner Parkes, II: General Counsel's Exhibit 1, consisting of documents numbered 1-A through 1-H, is received in evidence.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-A through 1-H for identification, were received in evidence.)

* * *

Trial Examiner Parkes, II: We will be on the record.

In regard to the motion contained in Respondent's answer, that is, the motion for dismissal, it is hereby denied at this time, but will be considered as an affirmative defense of the Respondent to the 8(a)(3) allegations of the complaint.

I believe in our off the record discussion Mr. Blair stated that he had another motion he would like to present at this time.

Mr. Blair has just handed us, Counsel and myself, that is, [8] a motion to dismiss.

Shall it be marked as an addition to Exhibit 1? I think it might well be.

Mr. Merrick: Yes, sir.

Trial Examiner Parkes, II: That will make it 1-I then, wouldn't it?

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 1-I for identification.)

Trial Examiner Parkes, II: If none of the parties object, we will consider General Counsel's Exhibit 1-I as admitted in evidence.

(The document heretofore marked General Counsel's Exhibit No. 1-I for identification, was received in evidence.)

Trial Examiner Parkes, II: At this time, I shall deny the motion to dismiss on jurisdictional grounds. This raises the issue of jurisdiction and will have to be litigated and the facts developed as to the company's operations.

I might state that my denial of both motions is not prejudicial to a new motion at a subsequent date.

I think the record should reflect your position, Mr. Blair, to Paragraph VI of the complaint, which in essence is the 8(a)(1) allegation.

Mr. Blair: For the record, Mr. Trial Examiner, we will at this time deny the allegation of the complaint of the employer—that the employer by any act or conduct discriminated against, coerced or intimidated any employee in his right to join or not to join the union, or to participate in union activities.

We are assuming, however, that in the complaint

that they are specifically pinning it down to one man in question and not to the several employees in the station, inasmuch as there is nothing in the complaint that anybody else is involved in the complaint besides one Ralph Click.

Trial Examiner Parkes, II: Well, I don't know whether you are justified in making that assumption or not.

Mr. Merrick: I think the language of the complaint will speak for itself. The word "employees" is used there. I think that staves off opposition.

Trial Examiner Parkes, II: Yes, it's "employees," I know, and that would include more than that one employee.

Mr. Blair: For the record, we make the denial in the same broad terms as the Board makes the charge.

Trial Examiner Parkes, II: Yes, I think the record is clear that you have now by your statement and by your answer denied the allegations of the fair labor practices contained in the complaint.

I just wanted to make that clear and sure before we started.

Mr. Merrick: I'd like to be heard if I may, Mr. Trial [10] Examiner.

Trial Examiner Parkes, II: Yes, sir.

Mr. Merrick: I'd like to state my position regarding this motion to dismiss that is entitled 1-I.

When we came here today, General Counsel and I were fully prepared to introduce evidence as to the material allegations of the complaint. However,

regarding this motion to dismiss on commerce, I do claim some surprise on that in view of the fact that prior to this time, as I will show, the Respondent agreed to allow the Board to assert jurisdiction over its operations.

Now, the allegation raised by the motion to dismiss that it is not engaged in commerce is a surprise as far as we are concerned, and at the close of the hearing, after we put in all of our evidence, I may ask for additional time to adduce commerce information, because this certainly is a surprise to us.

I think it is clear that the original three pleadings filed by both the General Counsel and by the Respondent raised only one issue. The sole issue raised by those means was as to whether or not Ralph Click was a supervisor or an employee.

There were no allegations in our answer directed to the allegations of the complaint. However, we were prepared to produce evidence on that.

However, we are claiming surprise regarding this motion to dismiss on commerce grounds. [11]

Trial Examiner Parkes, II: The record may show your position.

I suggest that you proceed with your case in chief and possibly during the course of your presentation of the case, you and Counsel might be able to stipulate as to the facts on commerce, I don't know, and resolve it.

Otherwise, you will have to adduce those facts some time.

Mr. Merrick: Is there any question—I would

like to address this question to Counsel—is there any question as to the status of the charging union as a labor organization?

Mr. Blair: None whatever.

Mr. Merrick: Well then, I will call Mr. Barnett.

EDWARD P. BARNETT

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. Will you state your name?

A. Edward P. Barnett.

Q. What is your address?

A. 411 Melrose Avenue, Medford, Oregon.

Q. And what is your occupation?

A. Manager of Radio Station KWIN.

Q. That is the Respondent in this proceeding?

A. Yes.

Mr. Merrick: If the Trial Examiner please, I would like [12] to ask permission to examine this witness as an adverse witness pursuant to Rule 43-B.

Trial Examiner Parkes, II: Permission is granted.

Q. (By Mr. Merrick): What is the location of Radio Station KWIN?

A. 1160 Helman Road, Ashland, Oregon.

Q. And where is Ashland, Oregon, located in relation to the California border?

(Testimony of Edward P. Barnett.)

A. Approximately thirty miles north.

Q. Now, I would like to hand you General Counsel's Exhibit 1 and refer you to Exhibit 1-D, which is the complaint filed by General Counsel, and referring you to Paragraph II of that complaint, are the allegations contained therein substantially true?

A. Well, here, I have a question here.

Q. Well, are they true, first of all?

Let me put it another way.

Was that information supplied by you to the Board? A. Yes.

Q. Well, is it true?

A. Yes, it is. The only thing, under the present circumstances, that I question, I question what is meant by the instrumentalities of interstate commerce. I mean, is that meant to be telephone lines or broadcast signals, or what?

Q. Well, you do broadcast, do you, in interstate commerce? [13]

A. Yes, we send out broadcast signals.

Q. Do you use telephone facilities?

A. Yes, we use telephone lines.

Q. And what telephone company is that?

A. Pacific Tel. and Tel.

Q. And in addition, do you carry any interstate network programs?

A. We have no network contracts. No, we have not contracted with the networks. We do pick up a program that is originated in L. A. It is not through a contract with the network. It is a con-

(Testimony of Edward P. Barnett.)

tract direct with the advertiser or with the agency representing the advertiser.

Q. What program is that?

A. Well, actually there are two that run three days a week on alternate days. The Haven Rest, a religious program, and the Bible Institute religious program.

Q. And those originate in Los Angeles, California? A. Yes.

Trial Examiner Parkes, II: And what is their duration?

The Witness: Thirty-minute programs.

Trial Examiner Parkes, II: During the time of a week, how many minutes would that be?

The Witness: Well, that is six days a week, thirty minutes a day.

Q. (By Mr. Merrick): How many local advertisers do you have? [14]

A. I will have to hazard somewhat of a guess. I couldn't hit it right on the nose, but I would say sixty.

Q. Do you represent all—or do you carry advertising for all of the larger firms in this area?

A. Not all the larger firms, no. We have some larger firms that do advertise with us.

Mr. Merrick: I think I had better defer this question of commerce until we have more evidence on it.

Trial Examiner Parkes, II: Very well.

Mr. Merrick: Unless the Trial Examiner is sat-

(Testimony of Edward P. Barnett.)

ified we have enough commerce information in the record.

Trial Examiner Parkes, II: Well, I'm not at this point.

Q. (By Mr. Merrick): Mr. Barnett, how long have you been Manager of KWIN?

A. Two years.

Q. When did you start, do you recall?

A. As Manager?

Q. Yes. A. On the first of September, '48.

Q. And what was your job when you started September 1, 1948? Did you start as Manager?

A. I started as Manager then, yes.

Q. And you've held that position to the present date? A. That's right.

Q. Were you ever employed by KWIN in any other capacity [15] besides Manager?

A. Yes, I was Commercial Manager part of the time.

Q. And how long were you Commercial Manager? A. Approximately two years.

Q. And prior to that, did you have any other job with KWIN? A. No.

Q. Now, roughly what are your duties as Manager of KWIN?

A. General management of the radio station operations, and that takes in, well, all the duties of management.

Q. Do you supervise all the employees?

A. I supervise all of the employees through de-

(Testimony of Edward P. Barnett.)

partment heads. The organization is broken down into departments.

Q. All right. What departments do you have?

A. We have an Engineering Department—well, it's actually Engineering and Announcing Department, Program Department, Commercial Department, and what we consider the front office, the receptionist and stenographer.

Q. Now, at the time Mr. Click was discharged, how many people did you have in the Announcing and Engineering Department? A. Four.

Q. And how many in the Program Department?

A. One actually. The way our organization is set up, as I said a moment ago, our engineers and announcers are in one department, but actually as announcing they fall in the department of programs also, because as they announce they are [16] program people, but they are licensed engineers also. So, that puts them in the Engineering Department, too.

Q. It's your recollection you had one in the Program Department? A. Yes.

Q. And how many in the Commercial Department? A. Three.

Q. And how many in the front office?

A. One.

Q. Well, that's a total of nine employees. Did that include yourself?

A. No, that wouldn't include myself.

Q. Now, do you recall the names of the people that you had in the Announcing and Engineering Department?

(Testimony of Edward P. Barnett.)

A. Yes. I had Ralph Click, Charles Fields, Phil George, Don Smith.

Q. And in the Program Department?

A. Don Berg, and also we had a dual role of Charles Fields. Charles Fields, he was our Program Director, but at the same time he was a licensed engineer and announcer in the Engineering Department.

Q. Well, then, who did you have in your Commercial Department?

A. Lane Bardeen, Ned Liebman and Doyle Seely.

Q. Then, who did you have in the front office?

A. Clara Daniels. [17]

Q. Now, as Commercial Manager for KWIN, what were your duties?

A. I was responsible for the source of revenue for the station as far as the selling end, not only direct sales myself, but the supervision and direction of any salesmen who happened to be in that department.

Q. In other words, you did not interest yourself in the technical aspects of the business?

A. No.

Q. Did you do so after you became Manager?

A. Well, actually, I'm no technician. I couldn't—I was not able to go into the Engineering Department and do anything other than recommend that this be done or that be done. I mean as far as speaking in technical terms, I couldn't because I'm not a technician.

(Testimony of Edward P. Barnett.)

So, I can't say that I directly was in control of our equipment. I didn't know enough about it to be—I mean, I was naturally Manager of the station. It fell under my jurisdiction, but I had to go through a department head because I'm no technician, and I'm no engineer at all.

Q. Who was your department head at the time Mr. Click was employed as an engineer?

A. The department head in the Engineering Department? Ralph Click.

Q. In other words, you know very little about engineering [18] yourself, is that your testimony?

A. I am no engineer. That's right.

Q. Now, what were Mr. Click's duties?

A. Mr. Click's duties were announcing as well as being in charge of the Engineering Department. He was responsible for the condition of the technical equipment. He was responsible for the—to some extent—the purchase of normal maintenance supplies.

I say, normal maintenance supplies. I mean, it goes just up to a certain point. He was able to purchase things that—such as, tube replacements, minor parts, and what-not.

Q. Major purchases, he was not responsible for?

A. Major purchases came to me for my approval, and if they were too large, of course, then I'd have to go higher for authority on them.

Q. Now, his primary duties were in connection with the condition of the equipment, were they not?

A. Primarily, yes. However, he—I mean, nor-

(Testimony of Edward P. Barnett.)

mal duties of a chief engineer also include building maintenance, as well as the technical condition of the broadcasting equipment.

Q. Well, under the F.C.C., which governs your station, he was primarily responsible for the condition of the equipment, right?

A. Yes, as chief engineer.

Q. Was he required to have any license? [19]

A. Yes, he was required to have an engineer's license.

Q. Now, Mr. Click was discharged as of September 2nd, 1949, was he not? A. Yes.

Q. And who replaced Mr. Click?

A. Philip R. George.

Q. And what had been his experience as an engineer prior to taking Mr. Click's place?

A. He had been a combination engineer-announcer at the station. He held a first class license. He had never before been chief engineer of any radio station to my knowledge.

Q. Well, had he had any radio experience outside of working at KWIN?

A. I was not Manager of the station at the time he was hired. However, I believe that he was hired right from school.

Q. And when he started, did he start as a radio technician?

A. He started as a combination technician-announcer.

Q. And who instructed him when he first went to work?

(Testimony of Edward P. Barnett.)

A. As I said, I wasn't Manager at that time, and what I say, I assume that it was the chief engineer.

Q. Probably Mr. Click, then?

A. Yes. I was not Manager at that time, however. I assume that's the way it was.

Q. Now, in August of '49, do you recall the Board election at your station? [20] A. Yes.

Q. I believe that was August 29th, 1949.

A. I forget the exact date, but that was approximately it.

Q. Now, prior to that election, do you recall questioning the employees as to the union beliefs and activities?

A. I did talk to all the employees. I mean the licensed employees or the announcers. I did talk to them regards to the union activity that was going on, yes.

Q. In other words, you questioned the people that were in the unit that were going to vote, is that right?

A. I asked them what their ideas were, yes.

Q. And you told them what your ideas were?

A. I told them that anything I was saying to them I was speaking as a personal opinion. I told them it did not——

Q. It was not the policy of the station?

A. That's right. I said it was my own opinion, that their opinion was as good as mine, and I didn't tell them that I didn't feel as though the station could afford the wage increase.

(Testimony of Edward P. Barnett.)

I made it very clear that I wasn't interested in how their vote was coming out. That was up to them, one thing that should be decided in their own minds, but I said I didn't want to tell them how to vote in the union election. That was up to them.

I felt I was—after all, I was responsible for [21] the station operation, and I knew that the station financially could not afford a wage increase. In all fairness to my job, I had to pass that on, but outside of that I told them that as far as their ideas were concerned, they were as good as mine.

Q. In other words, you were more or less interested in letting them know that they could vote as they pleased in the election? A. That's right.

Q. You were also interested in finding out what their views were on unions also?

A. Well, yes. The big thing was to let them—was to tell them we couldn't afford a wage increase. I mean, that was my job.

Q. That was your biggest worry?

A. Well, yes. That's the first thing the average employer thinks about when they think of a union contract is of your overhead going up.

Q. Now, prior to your questioning this man regarding the union, had you received a letter from the union? A. Yes.

Q. Do you have a copy of that letter with you?

A. Yes, I have it in my file.

Q. Is it possible to see it?

(Testimony of Edward P. Barnett.)

Well, maybe we could use our copy if you care to keep the original. [22]

A. Is this the one you're referring to, July the 25th?

Q. Yes.

Mr. Merrick: If you have no objection, I would like to put in the copy.

May we have this marked for identification as General Counsel's Exhibit 2?

Trial Examiner Parkes, II: It may be so marked.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

Q. (By Mr. Merrick): I would like to hand you what is marked for identification as General Counsel's Exhibit 2, which purports to be a copy of a letter addressed to the Manager of Radio Station KWIN and signed by Roy F. Renoud, Business Representative.

Did you receive the original of that letter?

A. Yes, I did.

Q. And then this questioning that occurred was after the receipt of that letter and before the Board conducted an election?

A. Yes.

Mr. Merrick: I would like to offer this in evidence, GC-2 for identification.

Trial Examiner Parkes, II: Any objection?

(No response.)

(Testimony of Edward P. Barnett.)

Trial Examiner Parkes, II: General Counsel's Exhibit 2 is received in evidence. [23]

(The document heretofore marked General Counsel's Exhibit No. 2 for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 2

Local Union No. 49

International Brotherhood of Electrical Workers

720 S.W. Ankeny Street—Broadway 5479

Portland 5, Oregon

July 25, 1949

Steam Fitter Bldg.

1417 S.W. 3rd Ave.

Portland 1, Oregon

Br 5479

Manager of Radio Station KWIN

1160 Helman Street

Ashland, Oregon

Dear Sir:

This is to advise you that Local 49, International Brotherhood of Electrical Workers, represents a majority of your employees and we are filing as of this date with the National Labor Relations Board a petition asking for recognition, as directed by Section 9 (C) (1) of the Labor Management Act of 1947.

We would like to know your position in regards

(Testimony of Edward P. Barnett.)

to recognizing Local 49 of the I.B.E.W. as the collective bargaining agency for all of your broadcast technicians and announcers employed in your station. Any discharges or attempts to coerce or intimidated will be viewed as an unfair labor act and such steps will be taken as directed by the Labor Management Act of 1947.

Hoping you give this your immediate attention and advise us as to your position at your earliest opportunity, I am,

Very truly yours,

(Signed)

ROY F. RENOUD,

Bus. Rep. Local 49, I.B.E.W.

RFR:AL

Registered—Return Receipt Requested

Admitted August 22, 1950.

Q. (By Mr. Merrick): Now, at the time you questioned these people in the Engineering and Announcing Department, is it your testimony that Mr. Click and Mr. Smith, Mr. Fields and Mr. George were in that unit?

A. They were in that department, yes.

Q. And you questioned each one of those?

A. Yes.

Q. You questioned any of the other employees in the other departments?

(Testimony of Edward P. Barnett.)

A. No. I mean, it was the I.B.E.W., I understood.

Q. Did you question Mr. Seely or Mr. Liebman?

A. I don't—no, I mean, there were discussions at the station among the employees. I mean in other than the Engineering Department. There was a question as to whether or not technically Seely, who was an announcer at that time, fell under the jurisdiction of this unit. I mean, we—I wondered about that.

Q. Well, anyway, do you recall the election being held on August 29th? A. Yes.

Q. And the results of the election?

A. Yes.

Q. The I.B.E.W. won, I believe, did they [24] not? A. Yes.

Q. Three votes to one, is that correct?

A. Yes.

Q. And as a result of that election, they were certified? A. Yes.

Q. Now, do you recall filing a protest to that election on or about September 12th?

A. Protest was filed, yes.

Q. Was that filed by the Counsel, Mr. Blair?

A. Yes.

Q. May we stipulate as to the contents of that protest? I don't have a copy of the original. Is this the protest?

“It has come to our attention that employee at one of the stations by the name of Click had used his influence to coerce and intimidate at least one

(Testimony of Edward P. Barnett.)

other station employee in an attempt to get him to vote in favor of the union."

Is that the basis of the protest?

A. That was the protest filed by Mr. Blair. I actually don't believe I saw a copy of that myself, and I couldn't tell you word for word on that at all. I didn't see it. Mr. Blair could answer the question, however.

Mr. Merrick: I will ask Counsel if we may stipulate that that is the substance of the protest filed by Respondent to the election held in Case No. 36-RC-320.

Mr. Blair: Well, frankly, I don't find a copy of that [26] letter in my file.

Mr. Merrick: Well, is that the substance of your protest?

Mr. Blair: If there is such a letter, Mr. Examiner, I will have to ask counsel to present it here as the best evidence because I can find no copy in my file.

Trial Examiner Parkes, II: Well, he's asking if that is the substance of your letter.

Since you wrote the letter, I think you could indicate that.

Mr. Merrick: I would like to inquire if the election was protested on the grounds that Click coerced the employees.

Mr. Blair: Well, it was, but whether it was by letter or not——

Trial Examiner Parkes, II: Have we also stipulated the date of this certification?

(Testimony of Edward P. Barnett.)

Mr. Merrick: I think the Board—I'd like to have the Trial Examiner take judicial notice of that certification. I don't have the date. Wait a minute.

On September 7, 1949, the Board certified Local 49, I.B.E.W., as the bargaining agent for the employees.

Trial Examiner Parkes, II: Very well.

Q. (By Mr. Merrick): Now, Mr. Barnett, regarding this protested election, were you the one that furnished the information to Mr. Blair as to the basis of the protest? [26]

A. Yes.

Q. Who was the employee that had been intimidated by Mr. Click?

A. Don Smith.

Q. Now, you discharged Mr. Click on September 2, 1949, is that correct?

A. Yes.

Q. When he was discharged, do you recall writing "Unsatisfactory" on his F.C.C. license?

A. Yes, I did.

Q. Handing you what is entitled "Federal Communications Commission Radio-Telephone Operator License," (handing), is this the license of Mr. Click you certified as being unsatisfactory?

A. Yes.

Q. Now, when you certified Mr. Click as being unsatisfactory, did you subsequently receive any communication from the Federal Communications Commission as to why he was marked unsatisfactory?

A. Yes, I received a letter from the F.C.C., saying that Mr. Click had written them.

(Testimony of Edward P. Barnett.)

Q. Do you know what the effect of an unsatisfactory recommendation is to the licensee?

A. Yes.

Q. What it is?

A. Well, it's an unsatisfactory—really means that they [27] cannot become employed by another radio station unless they want to overlook the fact or didn't realize they were getting an unsatisfactory man.

Q. Did you reply to the Federal Communications Commissioner in answer to their inquiry regard Mr. Click? A. Yes.

Q. Do you have a copy of your letter that you sent to them? A. Yes.

Q. Do you want to put that in evidence, or have you another copy?

A. Well, it doesn't matter as long as I can keep this.

Mr. Merrick: I'd like to have this letter marked for identification as General Counsel's Exhibit 3.

Trial Examiner Parkes, II: It may be so marked.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. Merrick): I would like to hand you what has been marked General Counsel's Exhibit 3. It purports to be a letter from the Federal Communications Commission to Mr. Ralph S. Click, and I'd like to refer to the paragraphs numbered 1 and 2 there.

(Testimony of Edward P. Barnett.)

Did you assign those reasons in answer to the F.C.C. inquiry?

A. Did I assign these reasons?

Q. Yes. [28] A. Yes.

Mr. Merrick: Would you care to examine it?

Mr. Blair: No objection.

Mr. Merrick: I would like to offer in evidence—however, if it's agreeable with Counsel, I'd like to substitute a copy.

Mr. Blair: That's all right.

Mr. Merrick: Mr. Click would like to keep the original.

Q. (By Mr. Merrick): And those reasons set out in Paragraphs 1 and 2 were the reasons assigned by you for writing "unsatisfactory" on his license?

A. That is the reason for the unsatisfactory entry.

Trial Examiner Parkes, II: Are you through with this at this time?

Mr. Merrick: Yes, sir.

Trial Examiner, Parkes, II: As I understand, there is no objection to the offer.

Mr. Blair: None at all.

Trial Examiner Parkes, II: General Counsel's Exhibit 3 will be received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 3 for identification, was received in evidence.)

(Testimony of Edward P. Barnett.)

GENERAL COUNSEL'S EXHIBIT No. 3

Federal Communications Commission
Washington 25, D. C.

November 28, 1949

In Reply Refer to: 8032

Mr. Ralph S. Click

121 Manzanita Street

Ashland, Oregon

Dear Sir:

Reference is made to the recent endorsement of your license service record as "unsatisfactory" by the manager of radio station KWIN. In response to an inquiry of the Rogue Valley Broadcasting Company, licensee of radio station KWIN, regarding this endorsement the Commission has received information indicating that the endorsement was not based on specific violations of the Communications Act of 1934, as amended, or the Commission's Rules but on the basis of the following:

"1. During the months of May and June, 1949, a Mr. Wallace C. Clark was employed at KWIN as a "man on the street" reporter. Mr. Clark used a wire recorder to record a daily program from the streets of the business district. For some unknown reason Mr. Click dislike Mr. Clark. As Chief Technician for KWIN it was the duty of Mr. Click to properly maintain the equipment used by Mr. Clark on his program. Never-the-less the equipment was constantly out of order in some fashion. Either the

(Testimony of Edward P. Barnett.)

recorder itself was not in good operating condition or the wire cartridges used were being broken. Naturally Mr. Click blamed Mr. Clark for the trouble and constantly recommended that the man be discharged. It is true Mr. Clark was no technician, however he was fully capable of operating a wire recorder. Mr. Click admittedly disliked the man and stated to the management he would not cooperate in the maintenance of the equipment used by Mr. Clark.

2. On July 15 and 16, 1949, KWIN did a remote broadcast of the annual local rodeo. For the broadcast we were using two microphones. One was placed in the broadcast booth where the remote console and the Chief Engineer would also operate. The other microphone was placed about a hundred yards away to be near the judges stand. There was a sportscaster at each mike. Mr. Click was engineering from the console at the booth. Sports-caster Ned Liebman was the man at the mike near the judges stand. A few days prior to this Mr. Click had taken a dislike to Mr. Liebman because of some difference of opinion and had complained to the management about having the man in the employ. During the broadcast from the rodeo most of the action was to be described from the judges by Mr. Liebman, yet the broadcast from that point was practically lost because of poor control by the engineer. Mr. Click was perfectly capable of proper operation from the control booth yet during the

(Testimony of Edward P. Barnett.)

times when Mr. Liebman was announcing the proper gain was ignored."

The above information, which has been made a part of the Commission's files and which may be considered in connection with an application for renewal of the license involved herein, is submitted for your comment.

Very truly yours,

T. J. SLOWIE,
Secretary.

Admitted August 22, 1950.

Mr. Merrick: Now, if the Trial Examiner please, I would like to have this letter marked for identification as GC-4.

Trial Examiner Parkes, II: It may be so [29] marked.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 4 for identification.)

Q. (By Mr. Merrick): GC-4 purports to be the original of a letter from Mr. Edward P. Barnett, Manager of KWIN, to Mr. A. J. Hedges, Field Examiner, N. L. R. B.

Handing you what has been marked as General Counsel's Exhibit 4, is that your signature that appears thereon? A. Yes.

(Testimony of Edward P. Barnett.)

Q. And what was the cause of your writing this letter to Mr. Hedges?

A. I imagine it was in answer to an inquiry of Mr. Hedges.

Q. As to why Mr. Click had been fired?

A. Yes.

Mr. Merrick: I would like to offer in evidence General Counsel's Exhibit 4 for identification.

Trial Examiner Parkes, II: Any objections?

Mr. Blair: None.

Trial Examiner Parkes, II: General Counsel's Exhibit 4 is received in evidence.

(The document heretofore marked General Counsel's Exhibit No. 4 for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 4

Rogue Valley Broadcasting Company
Studios at 1160 Helman Street
P. O. Box 305, Ashland, Oregon

November 10, 1949

Mr. A. J. Hedges, Field Examiner
National Labor Relations Board
715 Mead Building
Portland 4, Oregon

Dear Mr. Hedges:

We are in receipt of a letter from Mr. Robert J. Wiener dated October 18, 1949, with an attached

(Testimony of Edward P. Barnett.)

copy of charge filed against KWIN by Local 49, International Brotherhood of Electrical Workers, A.F.L. Mr. Wiener requested a statement of fact in the matter be directed to you as Examiner in the case.

According to the charge, Ralph S. Click, formerly Chief Engineer at KWIN, was discharged because of union activity. There is no basis for the charge as Mr. Click was released for incompetency and willful neglect of duty.

Very truly yours,

/s/ EDWARD P. BARNETT,
Manager.

Received November 14, 1949.

Admitted August 22, 1950.

Q. (By Mr. Merrick): Now, referring to General Counsel's Exhibit 3, do you recall a Mr. Wallace C. Clark who was employed at KWIN?

A. Yes. [30]

Q. Now, you state in this General Counsel's Exhibit 3 that "Never-the-less the equipment was constantly out of order in some fashion."

What equipment are you referring to?

A. The wire recording equipment that Mr. Clark used in his daily work, his broadcast.

Q. What was wrong with the wire recording equipment?

(Testimony of Edward P. Barnett.)

A. The reason that I say it was constantly out of order in some fashion is because of the fact that I am not a technician and I could not put my finger on the reasons for the recorder to be out of order.

If it is out of order, I know whether it works or not. What makes it not work is something that I cannot answer.

Q. Is it your impression that it was Mr. Click's fault that it was not in good working order?

A. Yes.

Q. And in the next sentence, you state:

"Either the recorder itself was not in good operating condition or the wire cartridges used were being broken."

Do you know why those wire cartridges were being broken? A. I do not know why.

Q. Did you investigate?

A. Suddenly it happened. I mean, after a long period of time of using wire cartridges, suddenly they started to being broken.

Q. Were a great many broken? [31]

A. Yes.

Q. They're quite expensive, are they not?

A. Well, to us, they are.

Q. Is it possible to repair them at the station?

A. Not satisfactorily. I mean, I don't believe they can be repaired.

Q. But you didn't investigate as to why they were being broken?

A. Well, no, I couldn't trace it down. I couldn't find out why.

(Testimony of Edward P. Barnett.)

Q. But you held Mr. Click responsible for it?

A. I did.

Q. Was it your recollection that Mr. Clark knew nothing about the technical aspects of operating the wire recorder?

A. He knew enough to operate it, but as far as the operation of the wire recorder, there is nothing difficult in that.

Other members of the station staff can operate the wire recorder. I mean, whether they use it in their daily work or not.

Q. Well, did you give Mr. Click orders to show Mr. Clark how to operate it when he first started to work there? A. Yes.

Q. That was because Mr. Clark did not know how?

A. It was just a—I don't say he didn't know how. He had operated one before, but, after all, when a new employee comes [32] in, we sort of check them out to our own way of doing it.

Q. Well, now, regarding Mr. Clark's troubles at the station, what caused the greatest amount of trouble, the equipment or the cartridges for the wire recorder?

A. What equipment do you mean?

Q. You stated in this letter to the Commission that:

“Never-the-less the equipment was constantly out of order in some fashion. Either the recorder itself was not in good operating condition or the wire cartridges used were being broken.”

(Testimony of Edward P. Barnett.)

Now, was it the cartridges that were causing the most trouble or the recorder?

A. Well, as I said before, if the entire recorder as a unit is not in working order, to me that means it's out of order, and as to what makes it out of order is something I can't answer.

Q. You didn't check to find out then?

A. I'm no technician. If I tried to check, I couldn't run it down.

Q. Now, referring to Paragraph 2 regarding the broadcast of the rodeo on July 15 and 16, you state that:

"During the broadcast from the rodeo most of the action was to be described from the judges by Mr. Liebman, yet the broadcast from that point was practically lost because of poor control by the engineer." [33]

What is the basis for that statement?

A. A broadcast of that type, we will have our—most of our equipment in a booth to be operated by an engineer. The broadcast from the—in this particular case—from the judges' stand was purely a microphone on the end of a cable. There's no control from that end with the exception of just talking into the microphone.

The control as to the volume and what comes out is controlled by the engineer in the booth.

Q. Well, now, wait a minute. You stated that most of the broadcast from that point was practically lost because of poor control by the engineer.

(Testimony of Edward P. Barnett.)

Now, my question is, what is the basis of that statement?

A. I was listening to the broadcast.

Q. You heard the whole broadcast?

A. Yes.

Q. Did you talk to Mr. Click about that?

A. No.

Q. Is that a serious matter? A. It was.

Q. Did you—who was the other broadcaster besides Mr. Liebman on that occasion?

A. Mr. Seely.

Q. Did you talk to Mr. Seely about it?

A. No, outside of the fact that I probably mentioned the [34] fact that I wasn't too satisfied with the outcome. I mean, I didn't talk to Seely or anybody else, try to go into any detail on that. There were reasons for it.

Q. Well, now, at the time that this broadcast was held, namely the rodeo broadcast, what was the comparative mike technique or the ability of Mr. Seely and Mr. Liebman as announcers?

A. They both had adequate experience. I'd say an equal amount of experience.

Q. Well, were there any particular faults that you noticed about Mr. Liebman's mike technique?

A. No, he's done a lot of mike work at our station, and the station he was with before.

Q. Well, now, at that particular time, did not Mr. Liebman have a tendency to wander away from the mike so as to make it very difficult for the engineer to pick up his broadcast?

(Testimony of Edward P. Barnett.)

A. Not to my knowledge. That's never been brought to my attention, and I myself have never noticed it.

Q. Did you ever hear the engineers discuss that fact? A. Never have.

Q. Did you ever hear any comments regarding his broadcast of ball games?

A. You mean technically?

Q. Yes. A. No.

Mr. Merrick: That's all. [35]

Trial Examiner Parkes, II: We'll have a short recess.

(Short recess taken.)

Trial Examiner Parkes, II: We'll be on the record.

Mr. Merrick: I have a few other questions.

Q. (By Mr. Merrick): Now, Mr. Barnett, in your absence from the station, does Mr. Bardeen take over the station at the present time?

A. At the present time?

Q. Yes.

A. Mr. Bardeen takes over at the present time.

Q. Was that also true of Mr. Click when he was working there?

A. Ordinarily, the Commercial Manager of the station—well, in our operation at least, takes over in the absence of the station Manager, primarily though that's because he is better informed as to the financial interests of the station than anybody else.

(Testimony of Edward P. Barnett.)

Q. Now, in your answer filed to this complaint you state that Click fired Marion Maston on December 31, 1947, and his right to hire or fire in the absence of the station Manager had never been rescinded.

Is that true? A. Yes.

Q. In other words, in the absence of the station Manager, he had the right to hire and fire?

A. That particular instance took place, of course, when— [36] I mean, I was not manager at that time.

Mr. Merrick: Just a minute. Mr. Trial Examiner, can we have an answer to my last question first?

Trial Examiner Parkes, II: Will you read the question, please?

(Question read.)

A. He had the right to fire under certain circumstances. He was never given the right to hire, I mean, outright. He could recommend on the hiring, and under certain circumstances, why, he could as chief engineer fire.

Q. (By Mr. Merrick): Well, here in your answer to the complaint, you stated in the absence of the station Manager he had the right to hire and fire.

Was that correct at that time?

A. At the time, Marion Maston was fired?

Q. Yes. A. Yes.

(Testimony of Edward P. Barnett.)

Q. Now, at that time you were not the station Manager? A. No.

Q. That is, in December of '47?

A. That's right.

Q. Who was the station Manager then?

A. Robert Reinholdt.

Q. You were the Commercial Manager at that time? A. Yes. [37]

Q. Now, at the present time when the Manager is out of town, the Commercial Manager takes over, is that correct? A. Yes.

Q. Is that also true when Maston was fired?

A. Yes.

Q. And Click was allowed to fire this man without consulting you? A. It was done.

Q. Is that contrary to orders?

A. I don't know at that time whether it was or not. Therefore, I said nothing about it. I mean, that's a matter between the chief engineer and the Manager when the Manager returned. I said nothing about it at the time. I didn't know whether it was contrary to orders or not. Therefore, I didn't say anything about it. So, I can't answer that completely.

Q. Well, now, at the present, in the absence of the station Manager, he would not have the right to fire, is that right?

A. I would say under certain circumstances he would.

Q. He would have the right?

A. Under certain circumstances.

(Testimony of Edward P. Barnett.)

Q. And what circumstances are those?

A. Well, gross disorder, drunkenness, or something of that nature. I would expect him to.

Q. Did it ever occur?

A. It's never occurred since I've been Manager. [38]

Q. Now, you say that he did not have the right to hire, but he had the right to recommend the hiring? A. Yes.

Q. Now, during your tenure as Manager, did you ever consult him regarding what his recommendations might be on hiring? A. Yes.

Q. Do you always follow his recommendations?

A. Yes, we always agree.

Q. In other words, you always accepted his recommendations, is that your testimony?

A. The occasion never came up when his recommendation was different than mine.

Q. Now, Mr. Click made up work schedules for the other technicians, did he not? A. Yes.

Q. And that was done under your direction, is that correct?

A. It came in to me for final approval.

Q. In other words, you had to approve them before it became a final order?

A. Well, yes, anything that goes on in the station, regardless of what it is, I want to know what it is. It's primarily a matter so I can see it and know what is going on.

Q. Did Mr. Click have the authority to give a pay raise to an employee? A. No. [39]

(Testimony of Edward P. Barnett.)

Q. As a matter of fact, did he know what the other employees were getting that were under him?

A. I assume that he did.

Trial Examiner Parkes, II: Was he paid the same amount of pay that the other engineers were?

The Witness: He received the same amount of pay as the man who had a combination job as program director and engineer-announcer.

Q. (By Mr. Merrick): He had the same hours and conditions of employment as the other technicians, did he not?

A. Well, yes, with the exception of chief engineer—well, I mean any department head—I mean things would come up that would require extra work. I mean that's part of the responsibility that goes with the department head, but I'd say normally do schedule hours, yes.

Q. And the extra work you refer to might be a breakdown of equipment?

A. Something of that nature, yes.

Q. Then, as chief engineer, it would be his responsibility to get that back in working order?

A. Yes.

Q. The fact that he was the most capable engineer was the reason that he would be called upon to do that, is that right?

A. Your chief engineer, that's who you consider the most capable man. [40]

Q. He's supposed to know more about it than the other technicians?

A. Yes.

Trial Examiner Parkes, II: What was the dif-

(Testimony of Edward P. Barnett.)

ferential in pay, if any, that existed between Click and the other three, Fields, George and Smith?

The Witness: Well, Fields was the man who was the program director, as well as an engineer-announcer. Their pay was the same.

The other two—offhand, I forget what their pay scale was at that time, but there was approximately, oh, from thirty to fifty dollars a month difference.

Q. (By Mr. Merrick): They were all paid on a monthly basis, were they not? A. Yes.

Q. And Mr. Click performed the same work as the people that he supervised, allegedly supervised, did he not?

A. Yes. He was also an announcer. He announced, too.

Q. He worked with the tools, he made spot announcements, and so forth, did he not?

A. Yes. [41]

* * *

Q. (By Mr. Renoud): Mr. Barnett, at the time of the representation hearing, Mr. Wiener, the Examiner from Portland, your position was that you were in interstate commerce, is that not true?

A. Well, I stated the type of business we did and the organizations that we do business with outside the State. I mean I said that to Mr. Wiener, yes, and as far as the interstate commerce itself, I mean that was—I mean I'm no expert on interstate commerce, and he would be the one to say it is interstate commerce if it is.

(Testimony of Edward P. Barnett.)

Q. Well, what is the primary area that you serve? A. Jackson County.

Q. Do you serve part of the area in Northern California?

A. No, that is not our primary area at all.

Q. What is the amount of dollar sale volume that you do per year? A. At the station?

Q. Yes. A. The gross?

Q. The gross.

A. It will be between fifty and sixty thousand.

Q. Between fifty and sixty thousand and what is the volume of purchases of dollar value?

A. Of purchases?

Q. Yes. [42]

A. Of equipment purchases?

Q. Of equipment, transcriptions, and so forth, all purchases.

A. I would say around five thousand dollars, something——

Q. Well, just approximate.

A. I'm making somewhat of a guess on that.

Q. Now, in your purchases, do you purchase a transcription service? A. Yes.

Q. Who do you purchase that from?

A. At the present time, we purchase it from World Broadcasting System.

Q. You only have the one?

A. And we have the Standard Transcription Service.

Q. Where do those originate?

A. Southern California.

(Testimony of Edward P. Barnett.)

Q. Do you do any direct purchasing of records from New York?

A. No, I imagine that these transcription services that we subscribe to have offices there, but nevertheless we deal with the Southern California—with the L. A. office.

Q. All the royalties then that you pay for those transcriptions are paid to the Southern California office?

A. That's right.

Q. Now, what national advertising firm do you do business with?

A. The Bible Institute, a religious program, that's the name [43] of the business, Bible Institute, and the same with the Haven Rest.

They are the only national programs that we have at this time.

Q. What are your sales also, like Kelvinator Refrigerator, that you're advertising? Do you have the sale of them over the year?

A. To local merchants, yes.

Q. But it is national goods that you advertise?

A. I can think of very little goods that isn't national advertising. I mean, it isn't made locally, no.

Q. That's the point I'm trying to bring out.

A. It isn't made locally, that is true.

Q. You mentioned using the phone lines, do you use those for remotes?

A. Yes.

Q. What percentage of your broadcasts are remote pickups?

A. One per cent, that is, that would be with

(Testimony of Edward P. Barnett.)

the exception of this Haven Rest and Bible Institute programs, and I'm speaking of broadcasts other than those.

Q. What about your ball games, your sports-cast, and your rodeo, and so forth?

A. Yes, those are remotes. When that particular season—I mean, when certain sport seasons are on, I mean the percentage would be higher than normal. Throughout the year, I would [44] say about one per cent.

Q. Well, for instance, in the summer when the ball games are on, they run what?

A. It's heavy. Those all figure about two or a two and a half hour broadcast.

Q. How many hours?

A. Two to two and a half hours a day.

Q. How many hours a day are you on the air?

A. Sixteen and a half.

Q. You also broadcast basketball games?

A. During the season, yes.

Q. Football games? A. Yes.

Trial Examiner Parkes, II: These games you're speaking of are Oregon games?

The Witness: They're local. They are local games, yes.

Trial Examiner Parkes, II: And you use the phone lines between the site of the sport and the station?

The Witness: Yes.

Q. (By Mr. Renoud): Who is the sponsor for these games?

(Testimony of Edward P. Barnett.)

A. They're local sponsors, local business men.

Q. Do you have any national firms, such as the Associated Oil Company on football?

A. Year before last we did. We didn't last year. It isn't every year that we get those. [45]

Q. What percentage would you say of your advertising was on a national basis—what percentage of your advertising is on national products?

A. You mean products not manufactured locally?

Q. That's right.

A. Well, that's a good question.

Q. It's intended to be.

A. I couldn't even answer that. I don't know what the manufactured products are that are advertised with us outside of—maybe Bear Creek advertises their pears. They're grown locally, but I don't know where these goods are manufactured.

Q. Would you say eighty per cent of your sold time is on nationally advertised products?

A. You mean products not manufactured locally, is that what you mean?

Q. That's right.

A. Well, anything I'd say I'd just hazard a guess. That's all I'd do.

Q. Well, that's all we want is your opinion.

A. I'd say it's a greater percentage of goods that are not manufactured here in the Valley and the area.

Trial Examiner Parkes, II: Who pays for such advertising?

(Testimony of Edward P. Barnett.)

The Witness: Local merchants.

Trial Examiner Parkes, II: That is, for example, an [46] electrical supply store here in town advertises a sale on Kelvinator refrigerators, we will assume, that are made in Michigan, but the local electrical supply company pay you for the time.

The Witness: For the time, yes.

Trial Examiner Parkes, II: Kelvinator in Michigan would not pay for it?

The Witness: No.

Q. (By Mr. Renoud): Is it not a fact that part of your advertising is paid for directly by manufacturers through some advertising firm?

You sell your time to that advertising firm in conjunction with the local merchants, and you are paid by the advertising firm rather than the local merchant?

A. No, possibly the local merchant gets some sort of help on the cost of his advertising, but it's something that's an arrangement between the local merchant and the distributor or the manufacturer. I don't know.

There are cases like that, but we deal with the local merchant.

Q. Most all of your advertising is sold direct to the local merchant and not to any local advertising agency?

A. That's right. We have advertising that is sold through an agency. I mean there are some—a

(Testimony of Edward P. Barnett.)

small portion of our business that does go through an agency, but that isn't local. [47] That isn't our advertising here. Our Bible Institute and our Haven Rest programs, those are agency programs. I mean, that is the—we have a contract with an agency on that, and the agency sends us the check, not the advertiser.

Q. That's the only two that you deal with?

A. No, there are some announcement accounts, two or three announcement accounts that come through an agency. They amount to very, very little. It's just a negligible figure.

Q. On the operation and maintenance of the station, what regulation are you covered by?

A. Will you repeat that, please?

Q. On the operation and maintenance of the station, what regulation are you covered by?

A. Our own regulations outside of the regulations that are given us by the Federal Communications Commission as to the status of our equipment.

Q. Is there any other State regulations you must abide by outside of the F. C. C. regulations?

A. Outside of the type of construction and all that of the building itself is concerned.

Q. As to broadcasts, the F. C. C. is the only regulations you observe?

A. As far as the broadcasts, yes.

Mr. Renoud: That's all I have, Mr. Examiner.

Trial Examiner Parkes, II: I have one question. [48]

(Testimony of Edward P. Barnett.)

On this transcription service purchased from the World Broadcasting Company and other concerns in Southern California, what is the amount of that purchase annually?

The Witness: That will run at the present time approximately twenty-five hundred dollars a year now for the two.

Trial Examiner Parkes, II: That's all I have.

Mr. Merrick: One more question.

Q. (By Mr. Merrick): In other words, Paragraph II of the complaint is not entirely correct, is that right?

Paragraph II states the amount was four thousand dollars.

A. Well, we've dropped one at the present time. We've dropped one library. We had three libraries.

Q. (By Mr. Renoud): Did you say World was in Southern California?

A. There's an office there, yes.

Q. Their main office is in New York, is that not right?

A. I imagine most of them have a main office there.

Mr. Renoud: That's all.

Trial Examiner Parkes, II: Mr. Blair? [49]

Cross-Examination

* * *

By Mr. Blair:

Q. In connection with your operation of the so-called two programs from California, would you

(Testimony of Edward P. Barnett.)

tell the Trial Examiner and tell me about what percentage of that business of the station is involved in that operation?

A. Those programs are about two or two and a half per cent of our time.

Q. Those come in over the wire?

A. Telephone wire.

Q. Which might be called a rebroadcast over telephone from some other station? A. Yes.

Q. Will you tell me about what amount of time on a percentage basis is spent during the entire course of a year, is spent in broadcasting over a telephone circuit here locally?

A. One per cent possibly.

Q. So what you're telling us, there's actually about three per cent or thereabouts of the company's broadcast time is actually spent in broadcasting what might be termed either hookup or at least wired telephone circuit service? [50]

A. Yes.

Q. And then in the matter of the complaint that was filed and the language contained therein, that is, receives communications, intelligence information by means of instrumentalities of interstate commerce.

Instrumentalities as used normally in the operation of your business is the telephone, is that right?

A. That's correct.

Q. In the same connection which any local merchant or any local home owner might use the tele-

(Testimony of Edward P. Barnett.)

phone as a means of communicating between one party and another? A. That's right.

Q. So that, naturally, any instrumentality you might use in connection with your business might be determined to be in interstate commerce within the broad meaning or sense is about three per cent of your entire operation?

A. I would say that, yes.

* * *

Q. (By Mr. Blair): I would like for you to give me as nearly as possible a detailed account of what actually happened from the time you first conceived the idea of discharge of one [51] Ralph Click up to the time of the charge being filed.

* * *

A. Well, I had been rather dissatisfied with the services of Click, and his general attitude toward the station since I became manager.

* * *

A. However, even though I felt as though he was not the man that I myself would have hired originally, nevertheless I would not discharge a man unless there were specific reasons for discharge, but at the same time I would be watching that rather closely to make sure that his operation was the type of operation [52] that I wanted at the station.

So, there were many things, such as personality differences and dissension in the station that was overlooked for a long time by myself, overlooked

(Testimony of Edward P. Barnett.)

as far as the discharging of a man for it, but not overlooked in my own mind, as far as what my own opinion of the man and the discharge of his duties were.

So, actually, it was not until specific instances arose that I decided that I definitely was going to make a change and set my mind as to about when I wanted to do it.

These instances were this, as we stated before, while Wallace Clark was employed at the station, Clark and Ralph Click did not get along. There was a personality difference there between the two that—I mean I can't say what the difficulty was. It's just the fact that they didn't get along.

Then, the equipment that Clark used always seemed to be going bad, breaking cartridges more so than we'd ever broken them before, and to me it was the job of the chief engineer to keep the equipment in good repair, but at the same time, as I said, I am no technician. I couldn't put my finger on the trouble. It was just another instance that I kept in mind, kept in the back of my mind. It was something else that was going wrong that I couldn't put my finger on, but I didn't like.

Then, about that time, I noticed—I think it was in the month of June, I received a statement from the Texaco Company. [53] We do business with them as far as our gas and oil purchases for the station are concerned. I received a statement from them along with the signed copies of invoices of the personnel of the station using gas, and I no-

(Testimony of Edward P. Barnett.)

ticed that the gasoline tickets that Ralph Click was using, had used, was a rather high amount. So, I called Click in.

I asked him, I said, "Don't you think that this is quite an amount of gasoline to be using? Have you been doing all this running around for the station?"

He said, "No." And I said, "Well, it looks like you've been buying enough gasoline. Have you used that on station business?"

He said, "No." And I said, "Did you have the authority to use gasoline on private business in amounts like this?"

He said, "No." And I said, "Well, what is the reason?" And he said, "Well, for a long time before you were Manager of the station, I was not allowed to have gasoline for company business, and I felt as though that I was due some back gasoline or some kind of consideration for the time when I used my own car and paid my own gas for the company business."

I said, "Well, you could have come in and discussed it." I said, "Why didn't you do that? If you thought you had something coming, why didn't you do that?"

And he said he didn't think it would do any good, and I told him, "Well, that's just the same as taking cash out of the [54] cash drawer."

And he said, "I know that."

I dismissed him. I mean I dismissed him from the office at that time and let it go at that because,

(Testimony of Edward P. Barnett.)

while actually I should have discharged him on the spot right at that time, I still thought, well, I'll think it over and see what kind of action I should take. So, I did not discharge him at that particular moment.

But a few days after that, this Wallace Clark, who was still employed by the station at that time—this was the latter part of June of '49—Clark came in and wanted to know if it was possible for him to work at the station after eleven o'clock at night.

I told him, "Why, yes, as long as you have work to do, why there's no reason why you shouldn't."

He said, "Well, I just asked because last night I was ordered out of the station." He said, "I was ordered out of the station by the authority of Ralph, Ralph Click."

He said, "I just wanted to make sure whether or not actually I can work here or whether I'm supposed to leave."

I said, "Why, yes, you're supposed to work here if you want to." I said, "I'll talk to Ralph about it and see what the situation is."

So, I went—at that time Ralph was on the board as an engineer-announcer at the time he was on duty, and I went in [55] and I asked Click what the situation was, why it was that he had Wally Clark put out of the station.

He said, "Well, it's always been the policy here that nobody—nobody of the station staff works after after eleven o'clock."

(Testimony of Edward P. Barnett.)

And I said, "I don't believe you're correct in that assumption because anybody on the station staff, as long as they have work to do, anybody can work after eleven o'clock at night even though we go off the air at eleven o'clock."

Well, that followed by a display of temperament. Click jumped out of his chair and started strutting around the room, swearing.

He said, "From this date on, I'll never be responsible for the technical equipment of this station as long as that policy lasts." He said, "From this date on, I'll not be responsible."

The language that he used was rough. His tone was a loud tone. He was swearing. I said nothing more to him at the time with the exception of, "I don't appreciate this childish display of temper." That's all I said to him at that time.

The following day I decided I was going to discharge Ralph on Monday, the following Monday.

Mr. Merrick: What day was that?

The Witness: It was approximately the 24th. It was just before a week end.

Trial Examiner Parkes, II: Of June? [56]

The Witness: June, yes.

So, the next morning, since I had decided to let Ralph go on Monday, I had some business to take care of with Mr. Hamaker, President of the Corporation, and during our conversation, I told him that I was going to replace our chief engineer.

I told him that the situation there was such that

(Testimony of Edward P. Barnett.)

I did not feel he was doing the organization any amount of good as the chief engineer should.

Then, the next day or two—it was on Sunday—Ralph Click went to the hospital for an emergency appendectomy, which meant that on Monday, which was the day I had scheduled him for release, naturally, in my own mind couldn't release a man, discharge a man who was in the hospital.

So, I decided to wait until the man was out of the hospital and back on his feet, couldn't release a man flat on his back. So, I decided to wait until he got back on his feet and was able to get around better.

He came back to work approximately a week after this operation. He came back to work and I told him to take the hours—I mean, work the hours he felt like working and not to overdo it.

About the time that Ralph got back to work, I had another occasion to talk to Mr. Hamaker on some station business, and he asked me at that time why it was that he heard Click back [57] on the air. He said, "Why is that? I thought you were going to release him."

And I said, "Well, I was, but I don't know whether you know it or not but Ralph's been in the hospital. So, I could not do anything about it when he was in the hospital, and didn't feel in my own mind that I should, and, therefore, he's with us until he's physically able to get around better."

I had intended to wait approximately thirty days, or whatever time it was that Click felt better.

(Testimony of Edward P. Barnett.)

The exact date wasn't set after that one postponement on that particular Monday.

And then the latter part of July, I received the notice from I. B. E. W. that the employees—that they had—I guess they were signature cards that the employees had signed and that there would be an election held at the station later, and that any attempts to discharge a man would be held as an unfair labor practice, or words to that effect.

Trial Examiner Parkes, II: Are you referring to General Counsel's Exhibit 2?

The Witness: Yes, I am.

So, when I received that, the first thing I thought of was the fact that, well, I guess that ties my hands and I can't replace my chief engineer now.

So, I talked to—I went to Mr. Hamaker, the President of the Corporation, and he recommended that I get in touch with [58] the Industry Council, Mr. Pat Blair, and talk the situation over with him. He'd understood that Mr. Blair was capable of handling situations such as this.

Mr. Merrick: When was this?

The Witness: That was—let's see, I received this—I probably received this letter on the 26th. It's dated the 25th. I don't know. I signed it. It was a registered letter, whatever that date is.

Mr. Merrick: That's when you contacted Blair, right after that?

The Witness: The next day or two, yes.

And I immediately told Mr. Blair of the situa-

(Testimony of Edward P. Barnett.)

tion, and the first thing I asked him was, "What shall I do in the case of our chief engineer?"

And he said, "Well," he said not to discharge the man until after the election had been held, make sure it's a fair election, and "After the election is held, why, as long as you have cause to discharge a man, why, then the man can be discharged."

So, the election, it went through, and the election was held, and I discharged the man on the 2nd of September.

Q. (By Mr. Blair): At the time you discharged the man, I take it that you signed a paper commonly referred to as his certificate, and what did you put on there?

A. Unsatisfactory. [59]

Q. Now, referring to General Counsel's Exhibit 3, a letter from the Federal Communications Commission, reference in the first paragraph of the letter is made to the fact that you signed his certificate "unsatisfactory."

Would you take note of that first paragraph and tell me what your impression is of the action of the Federal Communications Commission in regard to your signing that certificate?

Mr. Merrick: I'll object to what his impressions are. I think the document is the best evidence.

Trial Examiner Parkes, II: I don't believe that's particularly material.

Mr. Blair: Much has been made of the fact that the certificate has been signed "unsatisfactory" and it's been implied here that might have a lot to do

(Testimony of Edward P. Barnett.)

with future employment of the man and future actions of the Commission, and I would particularly like it to be noted, even if necessary, to read it in the record at this point that the Commission did not recognize the signing of the certificate beyond its apparent original intent, and that was the man was unsatisfactory as an employee, and not that it had anything to do with his license.

Mr. Merrick: Well, he can testify as to what the general frame of mind of what the person was who wrote that.

Is that what you want him to do?

Mr. Blair: Well, to simplify the thing then——

Mr. Merrick: It speaks for itself. [60]

Mr. Blair: For the record, referring to the first paragraph in a communication dated November 28th, 1949, from Washington, D. C., we will call the Trial Examiner's attention to the reference made to the first paragraph as it relates to the question of the word "unsatisfactory" on the license of Ralph Click. [61]

* * *

Q. (By Mr. Blair): Will you tell the Trial Examiner whether or not you at any time attempted to intimidate any one of your employees by a promise or a threat in connection with the election before the National Labor Relations Board? A. I absolutely did not.

Q. Were you ever advised against it?

A. Why, yes, I was advised against it. In my

(Testimony of Edward P. Barnett.)

own mind, it wouldn't be right to do that. I was advised against it in a letter that I received from the I. B. E. W.

Q. It was signed by whom?

A. By Roy F. Renoud.

Q. You took it to mean then that what he said in the letter he meant that he would charge you with an unfair labor practice if you did?

A. Well, that's right. That's why I looked for Counsel right away.

Q. Since the time you have been station Manager, do you know of any revocation of the authority that apparently was granted [62] to Click in the firing of one Marion Maston? A. No.

Q. And during your absence from the station, he was actually in charge of the operation?

A. To the same degree that he always was, yes.

Q. In case of breakdowns, was he the one who would normally be called? A. That's right.

Q. Then, you are telling me that he actually had charge of all the equipment in the station as a licensed operator? A. He did have.

Q. And in charge of that equipment, he would supervise any repairs or adjustments necessary?

A. That's right.

Q. And also that he would set up the schedules for the other employees in the station?

A. That's right.

Q. Even though he took one shift himself?

A. That's right.

Q. Was his shift changeable?

(Testimony of Edward P. Barnett.)

A. Yes, with the others.

Q. That being an arrangement of long standing?

A. Yes, as far as the announcers' setups were concerned, why, his status was the same as the rest. [63]

* * *

Q. (By Mr. Blair): Did I hear you say you had the sanction of Mr. Hamaker, who is President of the Corporation, to discharge Mr. Click?

A. I told him that I decided to discharge him, and Mr. Hamaker said that, of course, that was entirely up to me and he felt as though it would be a good idea himself.

However, he had never before voiced an opinion on the matter until I had actually made the decision to discharge him and then he voiced his opinion on how he had felt on it himself.

Q. And to the best of your knowledge, did Phil George have the same rights that Ralph Click had as a chief operator? A. Yes.

Q. He would be the man who would be called should anything go wrong at the station?

A. Yes.

Q. In the duties of Mr. Click while he was engineer in charge, beyond setting up the work schedules, you testified as to his authority to make purchases.

Does Mr. George still have that authority?

A. Yes. [64]

Q. Is that a normal authority given to what is known as the chief engineer of a radio station?

(Testimony of Edward P. Barnett.)

A. I believe so.

Q. In the station in which you are Manager, you have what are known as combination men, announcers and engineers? A. Yes.

Q. But in each case they are required to hold a license, is that true?

A. At the present time, yes.

Q. Does your program director at any time attempt to do any supervision, to handle any supervision over the technical end of the radio station?

A. Absolutely not.

Q. Is that a well known fact at your station?

A. Yes.

Q. So that, at the present time, regardless of who it might be, but in this particular case, Mr. George, actually your program director has no authority over him in the performance of his technical duties? A. That's right.

Q. Even during your absence?

A. That's right.

Mr. Blair: That's all.

Redirect Examination

By Mr. Merrick:

Q. Now, you testified regarding a Texaco [65] credit card.

What were the circumstances arising out of giving a credit card to Mr. Click?

A. When I first became Manager, Click came to me and asked whether or not he could have gaso-

(Testimony of Edward P. Barnett.)

line in the function of station business, and I told him, yes, I felt it was proper he should have, and so I gave him a company credit card.

I told him, you know, to use the credit card on station business.

Q. Now, in his job as engineer, he was required to do quite a bit of traveling, was he not?

A. There were times—I mean there are times in the case of sporting events when the chief engineer travels with the crew a number of miles, yes, that he does, but unless it's on a trip like that, it just doesn't amount to anything. I mean, the driving doesn't.

Q. How far is it from Ashland to the ball park here at Medford?

A. About twelve miles.

Q. And you broadcast those games every day in the summer that the Medford ball club is at home, do you not?

A. That they are home, yes.

Q. And Mr. Click was required to be there, was he not?

A. He was not required to be there, no.

Q. Well, he was there though on company business as a matter [66] of fact, was he not?

A. Yes. I mean there was equipment there naturally that he was responsible for. He was not there at the games necessarily, he was not required to be there.

Q. Now, prior to your giving him this credit card, there had been some dissatisfaction over the fact that these people had to use their cars and they

(Testimony of Edward P. Barnett.)

were not reimbursed for the mileage, is that not true?

A. You mean the announcers and engineers?

Q. The announcers and engineers.

A. Actually the only complaint I heard is the one that Ralph gave me when Ralph came in and asked me about a credit card.

Q. Well, now, when you found out that Ralph had been using some of this gas for his own personal use, and he frankly admitted to you that he had been doing that, did he not?

A. That's right.

Q. And that occurred when?

A. It was in June, I think, the first part or the middle of June, right in there some place.

Q. And didn't he tell you that for two years past he had been using his own car and his own gas and he felt that he had it coming to him?

A. Yes, he did.

Q. You didn't dispute that, did you?

A. That was something that happened before I was Manager. [67]

Q. Now, when did Mr. Click know that Mr. Clark actually was an employee of the radio station?

A. Well, my goodness, the day he was hired. It's a small organization.

Q. Well, he was a free lance man, was he not?

A. He was an employee of the station. He was not free lance.

(Testimony of Edward P. Barnett.)

Q. Did he have any programs besides this "man on the street" business?

A. No, there were some other programs that he sold. However, that was a program that he operated himself.

You see, he was a salesman for the station and operated this program, but he sold accounts other than the accounts for his own particular program.

Q. Well, now, on this "man on the street" deal, he sold that as his own, did he not? He bought the time from the company?

A. He did not.

Q. He did not? A. He did not.

Q. Do you know if Mr. Click knew if he did not?

A. Mr. Click should have been aware of the station policy. It would be just poor business to do anything other than the way we worked with Wallace Clark.

Q. And you stated that after Click came back from his appendectomy, you wanted to wait until he got back in shape before you fired him? [68]

A. That's right.

Q. Do you know the amount of work that the rodeo broadcast entailed?

A. I did.

Q. And that's rather strenuous work for a man who had just been operated on, was it not?

A. That is right. That is why I asked Mr. Click if he felt like handling it.

When Mr. Click came back from the hospital, I told him to set his own hours.

(Testimony of Edward P. Barnett.)

Q. That was about one week after he had been out of the hospital? A. That's right.

Q. And he was required to go out to the ball park and climb up and down the barricades, stringing wires, was he not?

A. He was not required to.

Q. He did though, didn't he? A. He did.

Q. Which indicated that he was in shape?

A. In his own mind. I mean I'll give him credit for that. I mean—my goodness, but he'd still only been out of the hospital a week.

Q. Now, were you having trouble with Click all the way along until you received the letter from the union?

A. The instances that I stated. [69]

Q. How was his conduct from July 25th, the date of the union letter, until the time that you fired him? A. He handled his job well.

Q. His attitude toward the job improved?

A. There was—as far as the technical control, as far as our equipment was concerned, we had no trouble.

Q. Well, actually, your main trouble with him was the fact that you didn't get along with him, wasn't that right?

A. No, otherwise, I would have fired him long before. I mean I realize I'm only human, and there are people that I don't get along with, but that doesn't mean that I'm right and they are wrong.

Q. Well, as far as his technical knowledge was concerned, he really knew his business, didn't he?

(Testimony of Edward P. Barnett.)

A. He had a knowledge, yes.

Q. In other words, when you wrote to the Board, as shown by General Counsel's Exhibit 4, you stated that he was fired for incompetence.

That wasn't correct, was it?

A. It was correct. He had the knowledge. Whether he applied that knowledge is another matter.

Q. Now, you refer to the wilful neglect of duty in General Counsel's Exhibit 4.

Just when did he wilfully neglect his job?

A. When he did not maintain the equipment of Wallace Clark; [70] when he made the statement to me that he would no longer be responsible for the equipment at that station. That is wilful neglect.

Q. That was the only instance then of wilful neglect?

A. That is the only instance that I say I can pin down. However, it was things like that that brought to light many things that had gone on that offhand I can't recall, but that just sort of brought them to light, and I felt, well, possibly my fears at that time are correct.

Q. Now, right after you received the union letter of July 25th, you say you contacted Mr. Blair relative to Click?

A. Yes.

Q. And you discussed the situation thoroughly, is that your testimony, as to whether or not you should fire him?

A. Yes.

(Testimony of Edward P. Barnett.)

Q. And Mr. Blair, acting as your Counsel, told you not to fire him until after the election?

A. That's right.

Q. And Mr. Blair said nothing about Mr. Click being supervisor at that time, did he?

A. Well, actually we hadn't—it broke rather suddenly, I mean. I mean, something I didn't expect, and as far as my first conversation with Mr. Blair, we didn't go into a lot of detail if I recall.

Q. Well, Blair said to let him go after the election, didn't [71] he? Let him vote in the election and then fire him?

A. No, he said not to fire him until after the election to make sure that we have a fair election.

Q. Well, there was no challenge made at the election as to his right to vote, was there?

A. At the time of the election, no.

Q. Now, in these shifts that Mr. Click worked, did he ever have the right to change the shifts of the other people that were working in the Engineering Department?

A. Well, he didn't have the right to change an entire shift. He had the right to change the hours in the shift somewhat, in other words, to start earlier or later, or something like that.

As far as fitting the shift into the sixteen and a half hour schedule—as far as taking a man off nights and putting him on mornings, and all, why, that is something that I ordinarily like to be consulted on.

But, as far as working the details, or stretching

(Testimony of Edward P. Barnett.)

a shift here, or shortening one here to make the day complete, why, he did have authority to do that.

Q. Now, these purchases that he made, those were merely routine purchases, were they not?

A. As I say, they are in normal maintenance.

Q. And primarily, his job was connected with the supervision of machinery and equipment, was it not, making routine repairs and making sure that the station remained on the air? [72]

A. He was also responsible for the men under him because, after all, they are also—the time they are on duty, they are responsible for certain equipment. Therefore, his responsibility was not only for the equipment, but for those men, too.

Q. Well, primarily, his responsibility was the equipment, was it not?

A. Well, I wouldn't say primary unless it's qualified somewhat. Either one is important. It depends on what we're looking at at the time.

If we're discussing the personnel situation, then it would be primary at that time.

I won't say that one has much primary importance over the other.

Q. The program director is not a supervisor, is he? A. No.

Mr. Merrick: That's all.

Q. (By Mr. Renoud): Mr. Barnett, during your tour as Manager there with Mr. Click being chief clerk, did you lose any time on the air due

(Testimony of Edward P. Barnett.)

to faulty operation and breakdown of the equipment due to not the proper maintenance on it?

A. When there were technical troubles—I mean, all stations have some technical troubles, and there are times when they are off the air for this and that.

I recall no time when we were off the air that I didn't go to Click and say that we were off the air due to your neglect, [73] but after all, once again I am no technician.

Q. Were you ever off the air outside of a power failure during the two years?

A. Well, it wasn't two years, I mean, that I was Manager.

Q. Well, from the time that you were Manager till the time you discharged him.

A. I don't recall. I mean, if we were, it was a small item. Otherwise, I would remember.

Q. Have you ever had any F. C. C. citations?

A. At the station?

Q. At the station. A. Yes.

Q. Due to Mr. Click's maintenance of equipment? A. No.

Q. Has the station been down due to failure since Mr. Click left?

A. There is nothing that has gone wrong any more so than—as I say, there are times of power failures and what-not that things come along. It's just the same as it's always been. If it was normal before, it's normal now.

Q. Well, you haven't been off the air any more

(Testimony of Edward P. Barnett.)

since he left due to mechanical failure than you were before? A. Absolutely not.

Q. Did you ever during the routine inspections of the F. C. C. get any citations that the maintenance was not kept up properly [74] by Mr. Click?

A. No.

Q. What were the citations you spoke of? What were they for?

A. We had—we are required by the F. C. C. to keep a political file, and the day the F. C. C. inspector came through, I was out on business and this file happened to be in my—I mean this political file happened to be in my files, and I had the file locked and he couldn't see it, and the girl in the front office didn't know where the extra key was for my files so that he could look at it, the political file.

Q. That's the only citation you received?

A. Yes. [75]

* * *

PHILIP R. GEORGE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. What is your full name, Mr. George?

A. Philip R. George.

Q. And your address?

A. 15 Wynburn, Ashland.

(Testimony of Philip R. George.)

Q. Now, what is your occupation?

A. Chief engineer of Radio Station KWIN.

Q. And how long have you been chief engineer of KWIN?

A. Since the time Ralph Click was released, approximately a year. [76]

* * *

Q. Did Mr. Barnett question you regarding your attitude towards the union?

A. I don't remember specifically any specific conversation with Mr. Barnett about the union. It was discussed at length with just the members of the station at the time. I'm certain that I very likely spoke to all of them about it.

Q. Do you recall his asking you how you felt about the union, and you told him you didn't consider them as Santa Claus?

A. Yes, I do remember that statement.

Q. And shortly after that conversation, was the subject of Ralph Click brought up by Mr. Barnett?

A. Would you state that again?

Q. Shortly after that conversation that you had with Barnett regarding the union, do you recall the subject of Ralph Click being brought up? That is, in connection with the union?

A. No, I don't recall.

Q. You don't recall making an affidavit, do you, to that effect? Who contacted you regarding the—or were you contacted regarding the union?

A. Regarding joining the union?

Q. Yes. [77]

A. Yes.

(Testimony of Philip R. George.)

Q. Who contacted you? A. Mr. Click.

Q. Was Mr. Click successful in getting you to join the union? A. No.

Q. Did you vote in the N. L. R. B. conducted election?

A. You mean the one that was held at the station?

Q. Yes. A. Yes.

Q. And you now have the job occupied by Mr. Click, is that right? A. Yes.

Q. Now, do you recall the rodeo broadcast that was made?

A. I recall that there was a rodeo broadcast made.

Q. Were you working at the station at that time?

A. As I remember, I was at the station at the time.

Q. Did you ever hear any comments from Mr. Barnett regarding the broadcast? A. No.

Q. No adverse comments at all?

A. I remember no comments at all about the broadcast.

Mr. Merrick: That's all.

Cross-Examination

By Mr. Blair:

Q. Mr. George, you related about some conversation around the station just previous to the election, or [78] some time previous to the election.

Was that among the employees themselves?

(Testimony of Philip R. George.)

A. Yes.

Q. Was that in a meeting with Mr. Barnett, or was that separately with the employees?

A. Well, if you define employees, I mean, as I remember it, it was generally discussed with everyone in the station, at the station and away from the station.

Q. Well, were the operators or announcers just generally talking about the thing in just general conversation? A. Yes.

Q. Did Mr. Barnett ever talk to you, specifically yourself, about the situation?

A. Not as I remember, no.

Q. So, as far as you recall, he never at any time made any promise to you of any kind? A. No.

Q. He never made any threat to you that if you joined the union, he might do something about it?

A. No.

Q. So, as far as you're concerned, would you say that when you had the opportunity of voting at the election, there wasn't anything to stop you from exercising your own free prerogative?

A. There was nothing except my own feelings on the matter.

Q. And nobody asked you how you voted? [79]

A. No.

Q. Certainly not Mr. Barnett?

A. No, Mr. Barnett, previous to the election, in some of our conversations—I can't recall the specific conversations or when it was, but I know I was left

(Testimony of Philip R. George.)

with the feeling that it would be a free election, and I should vote as I felt.

Q. But at no time did Mr. Barnett attempt to influence you one way or the other? A. No.

Mr. Blair: That's all.

Redirect Examination

By Mr. Merrick:

Q. Mr. Barnett knew how you voted, didn't he?

A. As I understand, no one knows how I voted.

Mr. Merrick: I have no further examination of this witness.

Q. (By Mr. Renoud): Mr. George, previous to going to work out there at the station, where was your previous radio experience?

A. I had approximately four years of various communications experience in the Army. I attended an Army Air Force radio communications school.

Then, after being discharged from the Army, I went approximately a year and a half to Multnomah College, and went through their regular course and their advanced course, and I [80] had no commercial experience prior to coming to WKIN. I had some amount of amateur radio experience, and that just about takes care of it, the experience I had.

Q. Did you do any maintenance at KWIN?

A. No, I assisted Mr. Click in quite a degree whenever I could, but I did no maintenance on my own. It was entirely under the supervision of Mr. Click.

(Testimony of Philip R. George.)

Q. Just to clear this in my own mind, you never did any commercial maintenance at any broadcast station prior to becoming chief engineer?

A. That's correct.

Mr. Renoud: That's all.

Recross-Examination

By Mr. Blair:

Q. You said you never did any commercial?

A. None, sir.

Q. You mean you had done so under the supervision of Mr. Click? A. Yes.

Q. It wasn't required of you at any of these stations except under his supervision?

A. No, it wasn't required.

Q. In fact, we better put it this way then, that it wasn't allowed that you do any except under his supervision?

A. I didn't feel it would be allowed, no.

Mr. Blair: That's all. [81]

Trial Examiner Parkes, II: Anything else?

Further Redirect Examination

By Mr. Merrick:

Q. Who hired you when you went to work?

A. Mr. Robert Reinholdt.

Q. Did he interview you? A. Yes.

Q. Click didn't interview you, is that right?

A. That's right. [82]

WILLIAM A. SELLENS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Q. (By Mr. Merrick): What is your full name, Mr. Sellens? A. William Alfred Sellens.

Q. And what is your address?

A. 148 Ohio Street, Ashland, Oregon.

Q. Were you at any time employed by Station KWIN? A. I was.

Q. Are you presently employed there?

A. Yes, sir. I mean, no, sir.

Q. When did you work there?

A. Well, I started there—I don't remember the year, when Mr. Reinholdt was first manager up there, when I started. I quit a year ago the first of last August.

Q. In other words, August 1, 1948?

A. Yes.

Q. What was your job?

A. I was janitor, night watchman, kind of a combined job. [83]

Q. What hours did you work?

A. From eleven o'clock in the evening till 6:30 in the morning.

Q. Were those the hours that the station was not in operation?

A. Yes, sir. Well, on Sunday it was closed an hour earlier.

Q. But generally the station closed at eleven at night? A. Yes.

(Testimony of William A. Sellens.)

Q. And opened at 6:30 in the morning?

A. Yes, sir.

Q. And you were the night watchman?

A. Yes, sir.

Q. Now, did you have any instructions as to who was to visit the offices while you were working?

A. They told me when I went to work nobody but the manager and the engineer after closing hours.

Q. That's after eleven o'clock at night?

A. Yes, sir.

Q. And who gave you that instruction?

A. Mr. Reinholdt's the man that told me.

Q. And did you have those instructions when Mr. Barnett was manager?

A. There was never any change made.

Q. Do you recall Mr. Clark visiting the offices after eleven o'clock one evening? [84]

A. He was in the office, yes.

Q. Do you know what he was doing?

A. He was telephoning, typing, one thing and another like that.

Q. Did you ask him to leave?

A. I told him I'd have to request it, yes. That was my orders.

Q. And what did he say?

A. Well, he seemed to get a little bit peeved about it, but he went. That's all I can tell you. He left.

Q. Was Mr. Click around there that evening?

A. He was.

Q. He was?

(Testimony of William A. Sellens.)

A. Yes, he had been around there.

Q. Did you inform Mr. Click that Clark was around?

A. Yes, I told him.

Mr. Merrick: You may examine.

Cross-Examination

By Mr. Blair:

Q. Did you say that this occurred at eleven o'clock or after eleven o'clock?

A. After eleven o'clock.

Q. Mr. Click was still on the job at that time?

A. He was in there to do some work.

Q. Mr. Click had come to do some work?

A. Yes, sir. [85]

Q. Have you ever received any instructions from Mr. Barnett to tell people that they should not be there after eleven o'clock at night?

A. No, I never got any instructions from him.

Q. So, you merely assumed that anything you had received from the prior manager carried over to this?

A. Yes, sir.

Q. Well now, do I get this straight?

You are the one that told Mr. Clark to leave the station and not Mr. Click?

A. Well, I don't know what Mr. Click told him, but I told him I'd have to require him to because that was my orders.

Q. So you have no knowledge directly then that Mr. Click didn't tell him the same thing?

A. No, I have no knowledge.

Mr. Blair: That's all.

(Testimony of William A. Sellens.)

Mr. Merrick: Thank you, Mr. Sellens.

Trial Examiner Parkes, II: I have one question.

When Mr. Merrick was questioning you, he asked, according to my notes, whether you worked at the radio station until August 1, 1948.

Did you mean 1948 or 1949?

The Witness: A year ago this last August, when I was let out.

Trial Examiner Parkes, II: This is August, 1950, now. [86]

The Witness: Yes, it would be '49. It was a year ago this last August.

* * *

DONALD E. SMITH

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. For the record, what is your full name, Mr. Smith? A. Donald Eugene Smith.

Q. And your address?

A. 103 Jeanette Street, Medford.

Q. And what is your occupation?

A. Combination announcer-technician.

Q. And where are you employed?

A. KWIN, Ashland.

Q. And how long have you been a combination radio announcer and technician?

(Testimony of Donald E. Smith.)

A. Since August, or rather April 15th, in [87] '49.

Q. To the present date? A. Yes.

Q. You've had the same job all during that period? A. Yes, I have.

Q. Who hired you for your job?

A. The manager, Mr. Barnett.

Q. Now, during your employment at KWIN, have you ever been contacted regarding—by anyone regarding the signing of a union card, or union authorization card?

A. Yes, Ralph Click and Charles Fields both approached me on it.

Q. Do you recall when that was?

A. Well, after I'd been working there about three months, I would say. I don't recall the date.

Q. What was the conversation?

A. Well, they were both for joining the union and they thought I should go along.

Q. Well, did you go along with them?

A. Yes, I did.

Q. Now, did you subsequently vote in the Board conducted election? A. Yes, I did.

Q. Have you been present during all of the prior testimony? A. Yes, I have.

Q. Did you hear Mr. Barnett testify that intimidation and [88] coercion had been used regarding your vote in the election? A. Yes, I did.

Q. Was any pressure brought to bear on you by Mr. Click as to how you should vote in the election?

(Testimony of Donald E. Smith.)

A. I don't believe there was any direct pressure that was brought to bear.

Q. Well, what did he say to you to get the vote for the union?

A. Well, I don't think he said anything except to vote for the union. He told me that Mr. Barnett had talked to him. They were going to cut down on their staff and couldn't afford four technicians, and I was the youngest one there. So, it would be me.

Q. So, that was the extent of his sales talk?

A. Well, no, that wasn't the extent of it, but they were all for the union. We thought it would help us a lot and help us to get other jobs. As far as any information, I think that was the extent of it. That's all I recall.

Q. Prior to your voting in the election, were you questioned by Mr. Barnett as to your views on the union?

A. Yes, I was.

Q. Well, what was the conversation with Mr. Barnett?

A. Well, he asked me what I thought of the union and how I thought I would benefit by it, belonging to it, and, oh, we just discussed unions in general, and he told me the situation of the [89] station, I mean their financial situation.

Q. That they couldn't afford to pay more?

A. Yes.

Q. When did that occur in relation to the vote?

A. Well, it must have been after he had gotten his notice there was to be an election and before the election took place.

(Testimony of Donald E. Smith.)

Q. Was it shortly before the election?

A. Yes, I would say it was.

Q. And did you have any other conversations with Barnett about the union before the election?

A. Yes, one day he brought a letter in, I believe it was from an industrial labor council or something, advising us not to join the Portland local.

Q. What were the arguments advanced in the letter, do you recall?

A. Well, by joining a certain union, which we did, or rather if we did, it would be turning our powers to bargain over to the Portland local and we wouldn't have any say in the union at all.

The people up there would make the laws and we would have to abide by them.

Q. Do you know who that letter originated with?

A. I think it was Mr. Blair.

Q. Now, during these conversations, was anything said about Mr. Click?

A. Yes, there was. Ed said that if I voted against the union [90] I wouldn't have anything to fear from Mr. Click because he wouldn't be there.

Q. When you say Ed, you mean Mr. Barnett?

A. Mr. Barnett.

Q. This statement occurred at the time you were shown this letter from Mr. Blair?

A. Yes, sir.

Q. And that was prior to the election?

A. Yes, before the election.

Q. Now, how did you get along with Mr. Click?

A. Well, I got along with him all right.

(Testimony of Donald E. Smith.)

Q. Do you recall Wally Clark working at KWIN?

A. Yes, he served there about the same time I did.

Q. In your job as a technician, did you ever have an opportunity to work on his program?

A. I run it.

Q. You ran his program?

A. From the console or the board.

Q. What was the quality of his programs?

A. Usually pretty poor, but all of our recordings are fairly poor.

Q. In general, what was wrong with Clark's program?

A. Well, I don't know. From my point of view, it was—he was interviewing people, as a rule. He'd get right up in front of the mike and shout into it, and a lot of times you wouldn't [91] hear that very good, a lot of background noise, trucks passing, machinery working.

Q. Do you recall any trouble that Clark had with cartridges for the wire recorder?

A. I know that we did lose a couple of shows on account of that.

Q. Do you know how those wire recorders work with relation to those cartridges?

A. I know how to run them.

Q. Is the cartridge something that can be repaired readily?

A. As far as I know, you have to send them back to the factory to have them fixed.

(Testimony of Donald E. Smith.)

Q. Well, is it a delicate instrument?

A. I think the reason we broke them—I've broken them rewinding them.

Q. Well, do you recall that Mr. Clark broke an abnormal number of them, or was it a small number, or what?

A. I really don't know.

Q. While working as a technician, did you ever have an opportunity to work on programs that Doyle Seely and Liebman worked on?

A. Yes, I did.

Q. What programs were they?

A. Well, ball games, road baseball games.

Q. Is there any difference in the mike technique of these [92] two men?

A. Well, quite a bit.

Q. What was it?

A. Seely was a lot easier to run the gain on. Ned seems to roll all over the place. He's kinda weak at times and you have to bring it up to get him.

Q. When you say "run the gain"?

A. Well, the modulator transmitter—they give us a certain signal, and we work it on the transmitter at the station, and when you bring it up to get a loud voice, you get a lot of back noise.

Q. What could cause this loss in the volume?

A. Well, being too far from the mike and not talking loud enough.

Mr. Merrick: I'd like to inquire of the Trial Examiner regarding the vote made by the men in elections.

Is it permissible to ask that question as to how he voted?

(Testimony of Donald E. Smith.)

Trial Examiner Parkes, II: It makes no difference to me.

Mr. Merrick: I assume that that would be with the parties who voted.

Trial Examiner Parkes, II: If he didn't want to tell, I wouldn't demand that he tell.

Q. (By Mr. Merrick): Do you have any objection to answering how you voted in the election?

A. None at all. Everybody else knows it. I voted for it. [93]

Mr. Merrick: That's all.

Cross-Examination

By Mr. Blair:

Q. Mr. Smith, in relating the conversation which you had with Mr. Click and Mr. Fields in connection with whether you should or should not join the union, you related some of the conversation, but apparently there are a few things, at least I seem to be confused about them.

One is that you were given to understand that you were the youngest employee in point of service, and there was going to be a reduction in staff.

Was there any promise made to you at the time by Mr. Fields or Mr. Click, primarily by Mr. Click, that anything would happen to you if you poined the union, a promise of any kind?

A. None at all.

Q. You weren't promised by Mr. Click that, even though you were the youngest employee, that you'd

(Testimony of Donald E. Smith.)

be given a chance to stay on the job if you joined the union or voted for the union?

A. None at all.

Q. He made no promise to you of any kind?

A. He made no promise to me.

Q. Mr. Fields made no promise to you of any kind? A. None whatsoever.

Q. Well, tell me this: Did Mr. Barnett ever make any promise to you?

A. Mr. Barnett never made any threats or promises whatsoever. [94]

Q. Of any kind to you in regard to the election to be held by the National Board? A. No, sir.

Q. Was there anyone else around the station who might have talked to you about elections?

A. Well, I think we all discussed it, but nobody brought any pressure to bear on us.

Q. Well, did anyone at any time attempt to get you in a corner and by any means directly promise or force you into exercising your vote?

A. No, I don't believe so.

Q. And practically everything that happened around the station during the course of this was merely a general discussion, more or less, people passed comment, is that right? A. Yes.

Q. Nobody promised anything, or nobody threatened anything? A. No, that's correct.

* * *

(Testimony of Donald E. Smith.)

Redirect Examination

By Mr. Merrick:

Q. Shortly prior to the election, you did have a conversation with Mr. Barnett regarding the union, did you not? [95] A. Yes, we did.

Q. And he questioned you as to how you felt about the union, is that right?

A. That's right.

Q. And then I believe you testified that you had another conversation in which he said that, if you voted against the union, you wouldn't have to worry about what—or about working under Ralph Click?

A. Yes, I think he thought Ralph Click was threatening me, or something. He said I wouldn't have to worry either way because whichever way it turned out, I wouldn't have to worry about Ralph Click.

Mr. Merrick: That's all.

Recross-Examination

By Mr. Blair:

Q. He didn't by implication say that anything was going to happen to Click because of this situation, but merely that you didn't have to worry how you voted as far as Click was concerned, is that right?

A. I didn't have to worry either way.

Mr. Blair: That's all.

Trial Examiner Parkes, II: Would you please

(Testimony of Donald E. Smith.)

tell me again exactly what Mr. Barnett told you in reference to the election and to Mr. Click?

The Witness: Well, Mr. Barnett said that he didn't feel the station could afford another pay raise at that time, and [96] he said that I'd have to make up my own mind as far as the union vote was concerned, and he said that if I voted against the union I wouldn't have to worry about the chief engineer, Mr. Click, because——

Trial Examiner Parkes, II: And that is the substance of the conversation?

The Witness: As near as I can remember it.

Trial Examiner Parkes, II: Any other questions?

Further Redirect Examination

By Mr. Merrick:

Q. Did he question you as to your attitude toward the union?

A. Well, he asked me what I thought about them.

* * *

CHARLES B. FIELDS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. What is your full name, Mr. Fields?

A. Charles Bruce Fields.

(Testimony of Charles B. Fields.)

Q. Your last name is spelled (spelling) F-i-e-l-d-s? [97] A. Right.

Q. And what is your address?

A. My present address is 1790 Archer Drive, Medford.

Q. And what is your occupation?

A. At present, operator-announcer of Radio Station KMED in Medford.

Q. How long have you been at KMED?

A. Since March of this year.

Q. And that's March, 1950, right?

A. Yes.

Q. Prior to that, where were you employed?

A. Employed as program director-operator-announcer at KWIN in Ashland.

Q. And what was your full title again?

A. Program director-operator and announcer.

Q. And how long were you program director-operator-announcer there at KWIN?

A. Well, the program director part, I had been program director about a year and three quarters, I'd say. I'd been employed by that station since September 16th of '46.

Q. And you started to work there prior to Mr. Click? A. Yes.

Q. What was your job when you started there?

A. Just straight operator-announcer.

Q. In other words, you were in the technical department? [98] A. Yes.

Q. After Mr. Click came there, did you work with him in the Engineering Department?

(Testimony of Charles B. Fields.)

A. Yes, I did.

Q. How did Mr. Click perform his duties as an engineer?

A. I thought he made a good chief engineer. He was very good.

Q. During the time that you were there up until March of 1950, did you ever hear any complaints by Mr. Barnett as to how he performed his technical duties?

A. No, I never did.

Q. Do you know whether Mr. Click ever hired or fired employees?

A. No, I don't know.

Q. Were you ever told that Mr. Click was your supervisor?

A. No, not in so many words. It's always understood at a small station that the operators and technicians work under the chief engineer.

Q. Did he supervise the work?

A. Yes.

Q. And was that the extent of his supervision over you?

A. That's all.

Q. Did he have authority to change your hours of employment?

A. No, not as far as I know.

Q. In other words, his supervision was directed to equipment, [99] not to employment, the employee?

A. The equipment and the way the operator worked with that equipment.

Q. Now, there's been a lot of testimony here regarding this N. L. R. B. election.

Did you vote in that election?

A. Yes, I did.

(Testimony of Charles B. Fields.)

Q. Do you have any objection to stating how you voted?

A. Not a bit. I voted for the union.

Q. And prior to the election, were you questioned by anyone as to your views regarding the union?

A. Yes. Mr. Barnett questioned me about the union.

Q. When did he question you?

A. About a week and a half before the election.

Q. What was the conversation?

A. Oh, just asking me what I thought about the union.

Q. What did you tell him?

A. Well, I—actually, it goes back to my home town of Portland. I received several jobs through the union in Portland from their—I forget the latest title—secretary in the office.

Q. Of the union office?

A. Yes, the union office in Portland. I received several jobs through her, and also I received notification of this job opening in Ashland at that time in '46. At that time, in fact, [100] between the two of us working together, I sent down application blanks to Ashland to sign up with the station there at that time.

Q. Well, did you tell him that you were in favor of the union?

A. Yes, I did.

Q. What did he say to that?

A. Well, he hoped that I'd keep my views with the station and their ideas.

(Testimony of Charles B. Fields.)

Q. Did he amplify that statement at all?

A. No.

Q. Was anything said about Mr. Ralph Click in this conversation?

A. No, not during that conversation before the election, no.

Q. Well, did you have any conversations with Mr. Barnett after the election regarding Click?

A. Well, the remark was passed that Mr. Barnett wanted a smooth running operation and wanted to eliminate trouble.

Q. Did he refer to Click by name?

A. No, not by name, but to me it was a reference to Mr. Click.

Q. When did that occur in relation to the election?

A. That was after the election.

Q. Was it after Mr. Click had been fired?

A. Yes.

Q. How soon do you know? [101]

A. Oh, I'd say about two weeks.

Q. Now, while you were employed there, do you recall working with a man by the name of Wally Clark?

A. Yes, I do.

Q. Did you ever hear any complaints regarding Click's failure to service Clark's equipment?

A. No, I haven't.

Q. Did you have an opportunity to work as a technician while Clark's program was on the air?

A. Yes, I did.

Q. How did you find those programs?

(Testimony of Charles B. Fields.)

A. The programs were very poor. I'd call them lousy.

Q. What was wrong with them?

A. From a technician's standpoint, the recording equipment he used was being operated improperly. There was a flashing indicator on the recorder itself, which was just supposed to flash occasionally from the sound of the actual wire recording itself. He was over-modulating, flashing that light too much. The result was a harsh program in the voice itself or whatever was picked up.

Q. Do you recall any trouble over cartridges that Clark had?

A. Yes, he'd broken quite a few. I'd seen them stacked up about the room.

Q. Do you know what was causing these broken cartridges?

A. Well, it could happen. I don't know whether it was on [102] his part or not.

You see, you can start the wire recorder and then insert the cartridge, and it will break the wire, chances are. It should be inserted into the recorder, and then the whole recording equipment started. That reduces the breakage.

Q. Can those cartridges be repaired at the station?

A. No, they have to be sent back to the factory.

Q. Is it a fairly delicate instrument?

A. Yes, I'd say it is. The wires used in the recording equipment are a little larger than a human hair.

(Testimony of Charles B. Fields.)

Q. Do you recall the rodeo broadcast in July of '49 in Medford? A. Yes, I do.

Q. Did you listen to that on the air?

A. I heard it at home.

Q. Did you hear the whole broadcast?

A. A portion of it.

Q. How was the broadcast?

A. Sounded good to me, what I heard.

Q. Well, from a technician's standpoint, was there anything wrong with it?

A. No, not at all.

Q. Was the voice level of the two men about the same? A. About the same, yes.

Q. And that's the responsibility of the technician? [103]

A. That's both the responsibility of the technician on duty at the rodeo or wherever the broadcast originates and of the operator on duty at the station.

Q. Now, do you recall working with Mr. Liebman and Mr. Seely? A. No.

Q. You never worked with those two people?

A. Let's see now. One time I worked with Doyle, I believe, on a ball game.

Q. Generally though, you didn't work with them?

A. No.

Mr. Merrick: Your witness.

Cross-Examination

By Mr. Blair:

Q. In your conversations with Mr. Barnett, do I get it clear that at no time did he ever make any

(Testimony of Charles B. Fields.)

promise to you of any kind in connection with this union election?

A. There were no promises made.

Q. He never made any threat to you of any kind?

A. No.

Q. And even though you admitted to him that you favored the union, he never took any reprisals against you for that, did he?

A. No, none at all.

Q. Tell me something else, Mr. Fields, in your job there at the station at the time referred to by Mr. Merrick when Mr. Clark was there, were you on the job all the time that you could possibly know what was going on, that is, in relation to Mr. [104] Clark's operation? Were you on the same shift with him at all times?

A. The recording equipment he operated, made recordings in downtown Medford, the cartridge was usually shipped back to the radio station and inserted in our machine.

Q. Did you always operate that machine when they came in?

A. We were on those programs about two months.

Q. You mean to the exclusion of everyone else?

A. Yes.

Q. And you were the only one that ran those programs, and the only one who knew anything about it?

A. I was the operator on the control board.

Q. Was there any friction between you and Mr. Clark?

A. No.

(Testimony of Charles B. Fields.)

Q. No animosity there that might lead you to say his programs were lousy?

A. No, I rather like the boy.

Q. Would the same thing have happened to anyone else who might have been making transcriptions out on the street or wherever else he was making them?

A. No, I'd say it's rather doubtful. Others would be rather careful. [105]

* * *

Q. (By Mr. Blair): Do you know of any situations where others than Mr. Clark to your own knowledge made bum transcriptions or lousy, as you would call them? A. No.

Q. Mr. Clark in your estimation was the only one who made lousy transcriptions?

A. That's right because the program was taken over by Phil George after Mr. Clark left and, being a technician, he knew how to run the machine much better.

Q. Any others?

A. No, not to my knowledge.

Q. So then, the only choice you had was to examine the difference between Mr. Clark and Mr. George? A. Correct.

Q. And in your estimation Mr. George never made a bum transcription, right?

A. Well, perhaps portions, but not so thorough a job as Mr. [106] Clark.

Q. Tell me, how do you account for the fact that

(Testimony of Charles B. Fields.)

this testimony of yours that Mr. Clark broke all these—what did you call them?

A. Cartridges.

Q. Cartridges. Is it your own personal knowledge that Mr. Clark broke all those?

A. I'd seen them.

Q. Is it possible that someone else might have broken some of them? A. It is possible.

Q. So then, when you say there were a lot of them broken, it could have been others that broke them too, or would it all be laid on Mr. Clark's doorstep?

A. The persons using the cartridges usually kept them segregated in the types they use.

Q. Well, could you tell me about how many Mr. Clark broke according to the number broken by others?

A. I'd say four broken by Mr. Clark.

Q. Just four? A. Yes.

Q. How many were broken all together?

A. I don't know over a period how many were broken.

Q. Then, it would be rather hard for you to determine as to the number broken by Mr. Clark as against somebody else if you [107] were actually asked by question: How many does Mr. Clark break against how many somebody else broke?

A. Well, I've worked with the recorders myself, and I'd say a cartridge would last about six months with careful usage. Mr. Clark broke in his period four all together that I know of.

(Testimony of Charles B. Fields.)

Q. Well, to the best of your knowledge, will you put it this way—I'm not attempting to put words in your mouth—Mr. Clark broke a number of cartridges, how many of those that were broken you're not sure?

A. That's right.

Mr. Blair: That's all.

Redirect Examination

By Mr. Merrick:

Q. Do you recall how long Mr. Clark worked there?

A. I'd say an average of about three and a half months if I'm not mistaken.

Q. Well, prior to his coming there, what would be the rate of breakage in cartridges?

A. I can remember one before he came there. That was about all.

Q. Did it increase after he came?

A. Yes.

Q. After he left, did it decrease?

A. Yes. [108]

* * *

DOYLE SEELY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. For the record, what is your full name, Mr. Seely?

A. Doyle Seely.

(Testimony of Doyle Seely.)

Q. And your address?

A. 236 East Main Street in Ashland.

Q. What is your occupation?

A. I'm program director of KWIN.

Q. And how long have you been program director, employed there?

A. About three and a half years. I started to work there in early '47.

Q. Were you ever contacted by anyone over there to join the union? A. Yes, I was.

Q. Who requested you to join the union?

A. Ralph Click.

Q. Now, have you heard the testimony here regarding Mr. Wally [109] Clark?

A. Yes, I have.

Q. Did you have an opportunity to observe the quality of his broadcasts?

A. Not especially. I was around the building at different times when the show was on. I have heard it, yes.

Q. What was the quality of that broadcast?

A. I would say it was very poor.

Q. Now, there's been some testimony about the cartridges used in wire recorders.

Did you hear anything about Clark breaking a great many of those?

A. Yes, I heard it mentioned.

Q. Do you know for a fact that he was the one responsible for breakage of those?

A. I know that he broke several in the recorder that he used.

(Testimony of Doyle Seely.)

Q. Do you know where they were being broken?

A. No, other than that they were cartridges he used and were quite frequently broken and we had to send for replacements on them.

Q. Do you recall a demonstration at which Mr. Click had Clark run through the procedure for using the wire recorder?

A. Yes, I do.

Q. Can you describe that demonstration for us?

A. Yes, he asked me to show him how to operate one. Mr. [110] Click asked Mr. Clark that.

Q. Was that the purpose of this demonstration, to find out what was causing the trouble?

A. That was it, yes, and Clark showed him how quite frequently to save time on his broadcast, he'd start the motor first and insert the cartridge, rather than placing the cartridge in full recording position, then going ahead and turning the motor on. Had an idea that would save him a certain amount of time between different stages of the broadcast.

Ralph pointed out to him that wasn't the accepted way and described the right way to him.

Q. Well, is that procedure that Clark was using, is that contrary to the instructions in the manual to operate that machine?

A. I understand that it is, yes.

Mr. Merrick: Your witness.

Cross-Examination

By Mr. Blair:

Q. During the time you were around the station,

(Testimony of Doyle Seely.)

you say you had a limited amount of experience with the situation surrounding Clark?

A. I had very little contact with him.

Q. You are, I believe, a technician?

A. No, I'm not.

Q. You're not.

At the time that this occurred, would you have known the [111] proper method of operating one of the things—whatever they call them—recorders?

A. Yes, I did.

Q. Had you learned that?

A. Yes, I had operated a wire recorder considerably.

Q. You had at that stage? A. Yes.

Q. Had you done it elsewhere?

A. No, that's the only place I ever used it.

Q. Is it possible that anyone not having had proper instruction might have misused the machine?

A. Very possible.

Q. Could that have been possible in Clark's case?

A. Yes, I'd say it would be possible.

* * *

ROY F. RENOUD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows: [112]

Direct Examination

By Mr. Merrick:

Q. What is your full name, Mr. Renoud?

A. Roy F. Renoud.

(Testimony of Roy F. Renoud.)

Q. How do you spell your last name?

A. R-e-n-o-u-d (spelling).

Q. And your address?

A. 1828 E. 41st Street, Portland, Oregon.

Q. And what is your occupation?

A. Business Representative for the International Brotherhood of Electrical Workers.

Q. And how long have you held that job?

A. Since March, 1948.

Q. And what are your duties? That is, as business representative of the Electrical Workers?

A. To organize the electrical industry as pertaining to radio broadcasts, radio service field, in the State of Oregon.

Q. Did you have occasion to organize Station KWIN?

A. Yes, I did.

Q. Can you give us the circumstances surrounding your organizing that station?

A. The station tied in early in July '49 and I received a request from Station KYJC to come down to Medford and organize the area.

Burnside, who was the chief engineer at Radio Station KYJC, sent me a letter and asked me to come down, which I did. [113]

I held a meeting in the afternoon with the technicians employed at Station KYJC. At that time, Burnside made a contact with Station KWIN and made arrangements for me to meet two of the technicians over in Ashland that evening in a restaurant.

We went over there and was introduced to Mr. Ralph Click and Mr. Charles Fields, who were

(Testimony of Roy F. Renoud.)

technicians employed at KWIN. During the discussion, I told them what our standard contract was for outside the metropolitan area.

We got into quite a lengthy discussion about the merits of union contact, how the station was operated, the amount of pay they should receive for the work, and also mileage and the benefits of paid holidays, and so forth.

At the time, Mr. Click and Mr. Fields signed authorization cards and applications. Also, they took two other applications and authorization cards to sign the other two technicians.

I told them that when I received the third application or authorization card, I would file with the N. L. R. B. for an election. They asked me at that time not to disclose any names, if I could refer to it as a majority rather than the men involved.

They felt it would be a very bad shock for the manager of the station.

I received the other authorization about a week later after going back to Portland. At that time, I directed a letter [114] to Mr. Barnett, the manager, telling him I represented the majority of the people employed in the station, and that I desired to enter into a collective bargaining agreement with him to represent the technicians.

Also, the same day I filed with the N. L. R. B. a petition asking for a representation election.

Q. Now, when you say you wrote him a letter, you're referring to General Counsel's Exhibit 2?

A. Yes.

(Testimony of Roy F. Renoud.)

Q. Did you receive any answer to that particular letter?

A. I received no answer at all as I can recall.

Q. Now, you state that on or about the date of that letter you also filed a petition with the Board?

A. That is correct.

Q. Then what happened?

A. Well, after filing with the Board, I was called by the officer in charge of the Portland office and asking if I knew any information on commerce.

I told him, no, that I didn't.

Q. Who is that officer in charge?

A. Robert Wiener. He was going to make a trip into Southern Oregon. So, he said he would get the necessary data and also set up the election date.

At that time, I had another petition in for KMED also.

He came down and set up the election dates for the [115] election to be held. He assigned the election to Mr. Ed Young, one of the Field Examiners.

Q. In other words, you worked out a consent election agreement with——

A. The Board did, yes.

Q. All right. And Mr. Young came down to hold the election, is that your testimony?

A. Yes, Mr. Young came down. I flew down and met him here. He was already here.

Q. Did you have a pre-election discussion with the management?

A. Yes, there was a pre-election discussion set up about an hour previous to the election.

(Testimony of Roy F. Renoud.)

Q. Who attended that election, or that discussion? A. Mr. Barnett, Young and myself.

Q. And what was the conversation in that discussion?

A. The conversation was led off by Mr. Young, who explained how the election would be conducted, that each side was entitled to an observer. I chose Mr. Fields. Mr. Barnett chose one of the other staff, and we also discussed as to whether Mr. Click was a supervisor or employee as defined under the Act.

Q. Who asked whether or not Mr. Click was a supervisor? A. Mr. Young.

Q. How was the question asked?

A. The question, I believe, was directed to Mr. Barnett, [116] whether Mr. Click had the power to hire, fire, effectively recommend the same, or any supervisory positions, in relation to wage increases or direction of the other employees, of the other technicians working at the station.

Q. Did he read from a document?

A. Yes, he did. He read from the standard form that all the Examiners carry with them.

Q. Well, he was reading from a copy of that?

A. Yes.

Q. What was Mr. Barnett's answer to that query?

A. Mr. Barnett's answer was that the complete control of the station and all personnel was directly under his supervision and no one else's.

Mr. Click's position, as chief engineer, in compliance with Federal Communications regulations

(Testimony of Roy F. Renoud.)

was to see that the equipment was maintained. He had no power to do anything else as laid out by the Act as a supervisor employee.

Q. In other words, it was his position that Mr. Click should vote in the election?

A. That is correct.

Q. Subsequently, was there any challenge to Mr. Click's vote?

A. There was no challenge whatsoever.

Q. Now, do you recall Mr. Click being discharged?

A. Yes, I do.

Q. How were you informed of that fact? [117]

A. I was informed by telephone by Mr. Click, and a letter followed in a day or so afterwards.

Q. And what action did you take regarding that?

A. I contacted Mr. Barnett on the phone, told him that we felt it was an unfair labor practice that he was discharged for union activity, and asked for him to be reinstated at the time.

Q. Did you ask for any reasons as to why he was fired?

A. Yes. As I recall, the reason was that he created dissension among the men and that he had not maintained the equipment properly.

Q. Were there any instances given where he failed to maintain the equipment properly?

A. No, there wasn't. I followed that up by checking with Mr. Chapman, the F. C. C. inspector, as to whether there had been any citations that the equipment hadn't been up when he made his periodic

(Testimony of Roy F. Renoud.)

inspections, and he told me, no, that the equipment had always been satisfactory.

Q. Was anything said about the "man on the street" program, Wally Clark?

A. Nothing was said about that.

Q. Was anything said about the rodeo broadcast?

A. No.

Q. Was there anything said about Mr. Click being incompetent?

A. Only that, as I recall it, Mr. Barnett said that he hadn't kept the equipment up to their satisfaction. He didn't lay out [118] just why or his reason.

Q. Did he say anything about him wilfully neglecting his duties? A. No, he did not.

Mr. Merrick: You may examine.

Cross-Examination

By Mr. Blair:

Q. Mr. Renoud, I would like to ask you if it's standard practice on the part of I. B. E. W. to place the second paragraph, as it's written in that letter, on your communications whenever you're having an election?

A. Only when we've been told by the employees of that particular bargaining agency that they're liable to be fired for joining the union.

Q. Tell me, what led you up to that point in this particular case?

A. The conversation that I had with Mr. Fields and Mr. Click in the restaurant at Ashland. They

(Testimony of Roy F. Renoud.)

were afraid that they would lose their jobs if they did join the organization.

Q. Did they give you any indication as to what they were afraid of? A. Yes, discharge.

Q. You heard the testimony of all the witnesses Mr. Merrick has called up to this point in regard to any threats, intimidation or coercion.

Are you still satisfied that there was such a threat made? [119]

A. I'm satisfied that he got information from some other source as to just what he could do or whether he thought he could.

Up to that time, my impression was that it was not set.

Q. Well, will you tell me about the time that you wrote this letter of July 25th?

Can you tell me what time you picked up the information from Mr. Fields and Mr. Click?

A. It was about the middle of July. I don't remember the exact date.

Q. And you immediately wrote the station after receiving the information from them?

A. No, as I explained in my previous testimony, I took two authorization cards back with me. When I received the third, which gave me a majority in the station, then I wrote the letter.

Q. That accounts for a delay of about how long, a week? A. I believe around a week. [120]

* * *

Q. (By Mr. Blair): Mr. Renoud, were you there and able to hear all of the conversation so that what you related in your [121] previous testi-

(Testimony of Roy F. Renoud.)

mony as said by Mr. Young was actually said by Mr. Young? A. That is correct. [122]

* * *

RALPH CLICK

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Merrick:

Q. Your name is Ralph S. Click?

A. That's right.

Q. Spelled (spelling) C-l-i-c-k?

A. That's right.

Q. What is your address, Mr. Click?

A. 121 Manzanita Street, Ashland, Oregon.

Q. And at the present time, what is your occupation? A. Truck driver.

Q. By whom are you employed?

A. J. W. Taylor.

Q. How long have you been with him?

A. Approximately two months.

Q. And what was your last prior [126] employment?

A. Chief engineer, Radio Station KWIN in Ashland.

Q. And when did you leave their employ?

A. The second of September of last year.

Q. That's 1949? A. Yes, sir.

Q. And how did you happen to leave?

A. I was discharged.

(Testimony of Ralph Click.)

Q. You were fired? A. Yes, sir.

Q. When did you first go to work there?

A. February the 4th, 1947.

Q. And prior to going to work there, where were you employed?

A. I was employed at KWIL in Albany, Oregon.

Q. What was your job there?

A. Technician-announcer.

Q. Technician-announcer? A. Yes, sir.

Q. And how long were you up at Albany?

A. Well, I was there twice for about four months each time. I was there from December, I think it was, or November of 1945 to February of '46, and then from October of '46 until February of '47.

Q. Prior to working there, what experience had you had in radio?

A. Radio experience that I've had is rather varied and all [127] inclusive.

At one time, I was in the engineering and designing department at Bendix Aviation at Burbank, California; also with the Glendale, California, Police Department as a radio engineer; the Arcata Police Department as a radio engineer; KRKA, Los Angeles, as a technician, and three years and half overseas flight with Consolidated Aircraft as a radio operator.

Q. That's during the last war?

A. During the last war, yes.

Q. Any other experience?

(Testimony of Ralph Click.)

A. Since 1935, I've been more or less active as amateur operator, constructing and designing my own equipment, also wireless operator in the United States Navy in 1918 and 1919 in Navy aviation.

Q. Well, in all, how much experience have you had in radio?

A. Approximately fifteen years.

Q. Now, you say that you first went to work at KWIN on February 1, 1947?

A. February 4th, 1947.

Q. What were the circumstances that brought about your going to work there?

A. I was requested by Mr. Reinholdt, the Manager at the time, to come to Ashland and assist in rebuilding the station after their disastrous fire the preceding December, to make sure that the station was built up according to the underwriters' code, [128] that good engineering standards were in practice as set up by the Federal Communications Commission, and to make sure that there wouldn't be any disastrous fire or cause for any fire in the future.

Q. Did you come down and rebuild the station?

A. I did, yes.

Q. And at that time, was the station in operation? A. No, sir.

Q. When did it subsequently go into operation?

A. On the ninth of March, 1947.

Q. And what was your position at that time?

A. Announcer-operator.

(Testimony of Ralph Click.)

Q. And how long did you remain an announcer-operator?

A. I believe it was in August of that year that I was made chief engineer.

Q. August of '47? A. Yes, sir.

Q. Now, who else was in the Engineering Department at that time besides yourself?

A. Well, there was Floyd Rush, chief engineer; Charles Fields, Tom Braconivitch, as I recall it.

Q. Mr. George started there after you had been in the Engineering Department? A. Yes.

Q. How about Mr. Smith? [129]

A. Mr. Smith was one of the more recent employees.

Q. Now, I would like to call your attention to the pleading which is entitled an answer to the complaint filed by Respondent. That's known as General Counsel's Exhibit 1-F. The paragraph starting, "That on December 31, 1947 . . ."

Do you recall the circumstances surrounding the discharge of Mr. Marion Maston?

A. Yes, I do.

Q. Well, would you explain those for the Trial Examiner and Counsel?

A. The circumstances involved approximately two weeks prior to that date—however, the date was January 1st, rather than December 31st.

Mr. Reinholdt had left the station to attend a convention in California. Mr. Charles Fields was on his vacation, which he had arranged for over the Christmas holidays. Mr. Braconivitch was leav-

(Testimony of Ralph Click.)

ing, had given his two weeks notice, and had stayed over a week, waiting for a replacement which Mr. Reinholdt had made with an operator in Portland, who on the day he was supposed to arrive, called me by phone from Portland to the effect that he was unable to accept the position, having accepted work elsewhere, which left only myself and an operator that we borrowed from KMED part time in the afternoon.

Mr. Braconivitch had waited as long as he could and he left. [130]

So, in the emergency, I called Portland, contacted several fellows up there, and the only operator available was this Marion Maston. He came to the station, went to work, and for about two weeks was very good.

Then, on the night of January the 1st, he showed up at the station for his shift at five o'clock dead drunk. He was so drunk he couldn't even find the door. He had to wallow through it.

I suggested he go home and sleep it off and come back tomorrow and pick up his regular shift and I would stand by for him. He wasn't satisfied with that. He wanted to stay around and argue, tried to keep in everybody's way.

So, I told him to go on home and stay there until Mr. Reinholdt came back and he could get his check, he was all through.

Q. That was in the absence of Mr. Reinholdt?

A. That's right.

(Testimony of Ralph Click.)

Q. Were you given any authority by Mr. Reinholdt to hire and fire in his absence?

A. Not directly, no.

Q. You had that authority though?

A. He gave me the authority to take care of the station in his absence.

Q. Now, when did Mr. Reinholdt leave the station, KWIN? A. On this trip? [131]

Q. No. When did he quit?

A. I believe it was September of 1948.

Q. And who was he replaced by?

A. Mr. Barnett.

Q. Under Mr. Barnett, did you have that same authority? A. No.

Q. Were you told that you did not have it?

A. Yes.

Q. Will you explain the circumstances surrounding that?

A. There was an operator-announcer by the name of Beckett that seemed to have a great deal of difficulty adapting himself to the method of operation used at the station.

Anything new coming up, a change of procedure, he was unable to understand it, and was very reluctant to even try. In all, he was rather unsatisfactory, and shortly after Mr. Barnett was made Manager, I went into his office and told Mr. Barnett that I had taken about all that I could, that I was going to discharge the man.

Mr. Barnett told me then that he would do all the hiring and firing at the station.

(Testimony of Ralph Click.)

Q. Well, then, in Mr. Barnett's absence, who had the authority to hire and fire?

A. Mr. Bardeen.

Q. And who is that gentleman?

A. He's the Commercial Manager of the station. [132]

Q. Were you told that by Mr. Barnett?

A. Yes.

Q. When did that happen?

A. Mr. Barnett went on a convention trip—I don't know just how soon it was after he became Manager—several months later, and he informed me then that Mr. Bardeen was in charge of the station.

Q. Now, during all the time that you worked for KWIN, from February 4, 1947, to the date of your discharge on September 2, 1949, did you ever receive any F. C. C. citations? A. No, sir.

Q. Under Mr. Reinholdt, was your work ever criticized by Reinholdt?

A. Not that I recall.

Q. Were you ever commended for your work by Reinholdt? A. Yes, a number of times.

Q. Do you recall some of those instances?

A. One was on the Shakespearian broadcast the first of the year in 1948. He thought it was a very good job and said so.

Q. Was that rather a large job for the station?

A. Yes, it is.

Q. How long does the Shakespearian festival last in Ashland?

(Testimony of Ralph Click.)

A. Well, we only run one series of plays, four different nights, four plays. We did them sometimes three or four times during the session. [133]

Q. He commended you for your work on that?

A. He did, yes, sir.

Q. Do you recall any other instances where you were commended for your work?

A. Oh, a number of times on football games, pickups that we made on football games, basketball games. I don't recall any specific instance.

Q. Now, under Mr. Barnett, were you ever criticized by Mr. Barnett regarding the way you handled your work?

A. No, not that I recall.

Q. Were there any charges made by Mr. Barnett against you as causing trouble and dissatisfaction?

A. No.

Q. Did he ever compliment you for your work?

A. Once.

Q. What was that instance?

A. That was on the instance of a remote broadcast of the Southern Oregon music festival at the college.

Q. What were the circumstances surrounding that?

A. That was a remote pickup of a hundred piece orchestra, two hundred piece band, and a hundred piece vocal group.

Q. What did Mr. Barnett have to say in that case?

A. Good job.

(Testimony of Ralph Click.)

Q. Do you recall working with Mr. Wally Clark? A. I do. [134]

Q. Did Mr. Barnett ever say anything to you about failing to keep up Mr. Clark's equipment?

A. No, sir.

Q. Did he ever say anything to you about the broken cartridges?

A. He mentioned the fact that the repair cost was getting to be exorbitant on the equipment.

Q. Did he blame you for the breakage?

A. No, not that I recall.

Q. Can you give us the circumstances surrounding this cartridge breakage with Mr. Clark?

A. When Mr. Clark first came to work, I was given to understand that he was a free lance artist and the station was to furnish him the equipment to be repaid out of his earnings, and I was instructed to teach him to use the wire recorder and the proper mike technique for the use of it.

I had several instruction sessions with Mr. Clark till he got to the point where he felt he knew more than I did, so I felt to instruct him any further was useless. He was rather arrogant and egotistical individual.

So, I felt I could do no more for him, and shortly after that he got the habit of inserting his cartridges, as has been discussed here so much today, into the motor equipment—into the equipment after the motor was started.

The cartridge is so constructed that it is placed on the [135] shaft, and when this motor shaft is

(Testimony of Ralph Click.)

turned over, thirty-six hundred R.P.M., it strikes this rubber driving drum on the fine wire and causes it to break, not every time, but it does cause it to break a number of times.

And these cartridges cost, oh, from thirteen dollars, I believe, up around to fifteen dollars each. Mr. Barnett complained about the excessive cost.

So, I suggested that as long as the equipment was Mr. Clark's, that the cost of repairs and my time of repairing them should be billed to Mr. Clark.

Q. Now, do you recall the rodeo broadcast?

A. I do.

Q. And did Mr. Barnett say anything to you about the engineering work on that broadcast?

A. Mr. Barnett said that Mr. Liebman and I had, or should have a discussion on the proper mike placement for this particular set-up. Mr. Liebman was in favor of having the microphone set up in the judges' stand and one in the announcing booth or the press box.

I objected on the grounds that necessary microphone cable necessary to run out to this judges' stand, together with the crowds and the bawling cows, and the language sometimes used by the cowboys would not be the very best for broadcast qualities.

As a counter suggestion, I suggested that we use both announcers in the press box and use a runner from the press [136] box to the judges' stand to get the results, which would necessitate possibly

(Testimony of Ralph Click.)

a short delay, but would make for a better broadcast.

I was overruled and agreed to set the microphone up in the judges' stand as he wished.

Q. Well, was there any criticism of the finished product? A. None that I heard.

Q. Well, would you have heard it if there had been? A. I should have.

Q. Now, there's been some testimony here by Mr. Barnett regarding the use of a credit card, a Texaco credit card.

Do you recall the use of such a credit card?

A. I do.

Q. Will you give us the circumstances surrounding that credit card?

A. Shortly after Mr. Barnett was made the Manager of the station, I asked him if I could have a credit card because there is quite a bit of running around a chief engineer has to do at the station in his own car to check the remote lines, set-ups, positions, go over to Medford to obtain parts.

So, Mr. Barnett agreed to give me a card. I used it for—oh, I'd say two or three months very conservatively. Then, as Mr. Barnett testified, I used some for my personal use. I readily admitted it and wasn't hesitant about it at all.

I felt it was my just desserts, but I never took the time [137] and trouble to take it up with Mr. Barnett.

Prior to the time of Mr. Barnett's managership, I did the same work at my own expense for a year

(Testimony of Ralph Click.)

and a half, and I felt I had something coming.

Q. Well, after this discussion with Mr. Barnett regarding the credit card, was anything else ever said about it?

A. No, he told me that that wasn't the proper thing to do and I said, "All right, it won't be done any more."

Q. And then it was dropped?

A. It was dropped.

Q. When was that?

A. I imagine around May or June of 1948. I don't know for sure.

Trial Examiner Parkes, II: What year?

The Witness: '48.

Q. (By Mr. Merrick): Do you recall when it was in relation to the rodeo broadcast?

A. It was prior to that.

Q. It was the year before?

A. No, just prior to it.

Q. Then, it would be '49? A. '49.

Q. Now, when did you first get interested in the union at KWIN?

A. When I was contacted by Mr.—the chief engineer at [138] KYJC—what is his name?

Q. Would that be Mr. Burnside?

A. Burnside, yes.

He called me one evening, said a union representative was in from Portland and asked me if I was interested. So, I thought it would do no harm to find out what the union had to offer and I in-

(Testimony of Ralph Click.)

vited the representative to Ashland to have a meeting.

Q. And did you have that meeting?

A. We had that meeting at the Spotlight Cafe in Ashland.

Q. Did you hear Mr. Renoud's version of it?

A. I did.

Q. Is that your version of it also?

A. Yes, sir.

Q. And after Mr. Renoud's visit, what further steps did you take regarding the union?

A. Well, after I signed the authorization card and application, I asked Mr. Renoud to allow me to have two extra application blanks that I might pass on to the other members of the staff.

Q. The other men in the unit? A. Yes.

Q. And which men were they?

A. Mr. Seely and Mr. George and Mr. Smith.

Q. Was Mr. Seely in the unit?

A. No, he wasn't, but I tried to get [139] him in.

Q. And did you sign those people up too?

A. Signed up Mr. Smith. The other two were not signed.

Q. And now, you've heard the testimony regarding this election on August 29, 1949.

Did you vote in that election? A. I did.

Q. Now, prior to that election, did you have any conversations with anyone from management regarding your views on the union?

A. Yes, I did.

(Testimony of Ralph Click.)

Q. Who did you have the conversation with?

A. Mr. Barnett.

Q. And when?

A. That was the day he received this letter from Mr. Renoud.

Q. How did the conversation take place?

A. He called me into his office.

Q. Could you give us the conversation?

A. I don't know whether I can give it all to you or not because he was obviously very mad.

Mr. Blair: I object to that.

Q. (By Mr. Merrick): All right. You say he was mad, what is the basis for that statement?

A. His ears were white.

Q. And what was his manner of speaking?

A. Overbearing and domineering. [140]

Q. What did he have to say?

* * *

A. He asked me first what I thought about this union deal, and I told him I thought it would be a good thing for the employees, and he said that anyone "who is not satisfied here, can quit. We don't want any damned union around here. They leave a very bad taste in my mouth, and it would if you joined the union behind my back."

This continued for quite some time, very repetitious. Obviously, the man didn't like the idea of our joining the union. I told him that the union had made no demands on him and didn't intend to make any demands on the station.

(Testimony of Ralph Click.)

I also suggested they wait until demands were made before he started jumping too far to conclusions.

Q. What else was said, do you recall?

A. He said it left a very bad taste in his mouth. He repeated that a number of times and finally he said he wouldn't rest until it died.

Q. That was prior to the election?

A. That was the day he received the letter from Mr. Renoud, approximately two or three weeks prior to the election.

Q. Did you have any other conversations with Mr. Barnett [141] before the election?

A. No.

Q. Did you vote in the election? A. I did.

Q. Do you have any objection to saying how you voted? A. No, I voted for the union.

Q. Did anyone challenge your voting?

A. No.

Q. And what happened next after the election?

A. Everything seemed to settle back down to a normal routine until about 4:20 in the afternoon of September 2nd.

Q. That would be the Friday after the Monday on which the election was held?

A. That's right.

Q. Monday was August 29th, and what happened on September 2nd?

A. Mr. Barnett called me in the office and asked me to close the door and said, "Ralph, we're going to have to let you go."

(Testimony of Ralph Click.)

And he listed approximately seven or eight various reasons, that I was inefficient, uncooperative, trouble maker; I hadn't the slightest conception of the duties of a chief engineer; unqualified, kept the other employees in a state of turmoil to where they were unable to do their work for two weeks at a time; I talked to members of the Board of Directors behind his back; seeking other employment; and I don't remember any [142] more.

Q. What was the matter on that occasion?

A. He was very upset.

Q. Why do you say he was upset?

A. Well, any employer who is discharging an employee, if they're not in another state or upset, would not give him twenty minutes to get off the premises.

Q. Did he shout it to you? A. He did.

Q. Was that his usual manner of speaking to you?

A. No. Then, he ran into the control room, grabbed my license off the wall before I was able to get to it, took it into the office and was in such a haste he couldn't wait to take the padding off the back to get at my license that he took a knife and cut it out.

Q. Was it in a frame? A. Yes, sir.

Q. And he cut it out of the frame?

A. Yes, sir.

Q. Now, prior to this, did you have anything to say to the charges?

A. Well, he endorsed my license as unsatisfactory on the portion on the back of the license where

(Testimony of Ralph Click.)

the station endorsement is placed. He endorsed it as unsatisfactory. [143]

Q. Well, did you have anything to say to these charges being made against you?

A. No, I didn't say anything.

Q. Then you left the station? A. I did.

Q. Were you thrown off the station?

A. No, I wasn't thrown off. I said to Mr. Barnett, "Aren't you kinda rushing things?"

And he said, "That's the way it is," or words to that effect. He told me to use my own judgment on picking up my tools because he didn't know whose tools were which, whether they belonged to the station or which was mine.

Q. Was that a regular payday?

A. No, sir.

Q. What was your payday there?

A. The first and fifteenth.

Q. In other words, you had just received a month's pay, is that right? A. That's right.

Q. And when you were discharged, you had some additional pay? A. Two days.

Q. Do you know who succeeded you as chief engineer? A. Phil George.

Q. Now, prior to the date of discharge, the day of discharge, had you ever been told by Mr. Barnett that you were inefficient? [144] A. No, sir.

Q. Had he ever told you that you were unco-operative? A. No, sir.

Q. Had he ever told you that you were a trouble maker? A. No, sir.

(Testimony of Ralph Click.)

Q. Had he ever told you that you were inefficient? A. No, sir.

Q. Had he ever told you that you were unqualified? A. No, sir.

Q. Had he ever told you that you were keeping the employees in a state of turmoil?

A. No, sir.

Q. Had he ever told you that it was against the policy of the company for employees to seek other employment?

A. No, sir. He did say he wouldn't hold that against me.

Q. That was one of the charges he levied against you the day you left? A. Yes, sir.

Q. Had he ever told you before this it was against the rules to talk to the Board of Directors?

A. No, sir.

Q. Had that been done with his knowledge?

A. Well, I don't understand why it should be his knowledge because the Board of Directors are friends of mine.

Q. Well, did other employees talk to the Board of Directors? [145] A. Yes.

Q. Now, on the date that you were discharged, was anything said about the quality of the rodeo broadcast? A. No, sir.

Q. Was anything said of broadcasts?

A. No, sir.

Q. Was anything said about Mr. Wallace Clark?

A. No, sir.

(Testimony of Ralph Click.)

Q. Was anything said about wilful neglect of duty? A. Not that I recall.

Q. Now, on the date that you were discharged, September 2nd, were you all caught up on your work at that time? A. I was.

Q. When was that in relation to your regular overhaul period?

A. It was the day following.

Q. What is that, a monthly overhaul?

A. That's a complete overhaul on the first Thursday of the month, with a frequency check with the R. C. A. at Point Reyes, California. That's a working agreement with the Federal Communications Commission and is accepted.

Q. Is that monthly overhaul then, and frequency check a large job? A. Yes, it is.

Q. And this discharge was on the day after that job? A. It was. [146]

Q. What time did you get through work on that Friday morning? A. About two, two-thirty.

Q. Do you recall the prior testimony regarding Mr. Clark being in the station after eleven o'clock at night? A. I do.

Q. Have you ever been given any instruction by anyone regarding visitors in the station after working hours?

A. When the station was first put on the air after it was rebuilt after the fire, Mr. Hamaker and Mr. Reinholdt, Andrew Weisman, who was employed at that time, Mr. Edwards and myself were present.

(Testimony of Ralph Click.)

Mr. Hamaker established a policy of no one being permitted in the station after hours with the exception of the Manager, the chief engineer or someone he may bring with him, and the watchman.

Q. And do you know if that rule was ever rescinded?

A. To my knowledge, it was never rescinded.

Q. And was that the basis of your seeking to get Mr. Clark out of the station?

A. That was. That and the fact that he was turning the equipment on at night.

Q. Now, what happened the next day after this?

A. Well, the next afternoon—I imagine around four o'clock—I was operating the console. Mr. Barnett came into the [147] control room and wanted to know why I had removed Mr. Clark the night preceding.

I told him as far as I was concerned that letter from Mr. Hamaker still stood and no one had ever changed it to my knowledge; furthermore, that I had reports from Phil George that Wally Clark had been in there attempting to turn on some of the equipment at night after hours after we had left, also Mr. Sellens told me that.

Q. To turn on equipment after closing hours, is that a violation of F. C. C. regulations?

A. It is.

Q. As chief engineer, is that your responsibility?

A. It is. [148]

(Testimony of Ralph Click.)

Q. Now, you stated that Mr. Barnett informed you that you had no authority to hire and fire when you had this trouble with Beckett, did he ever change that statement? A. No.

Q. When was that, when do you recall that happening?

A. It was in the latter part of September or October of '48, I believe it was, shortly after he became Manager.

Q. Now, were your conditions of employment, hours, and so [149] forth, the same as the other people in the Engineering Department?

A. Not necessarily.

Q. Would you explain that?

A. There were times when my work would be caught up and I had nothing to do, except possibly catch up on the latest trade periodicals.

Other times, when there's difficulty or something to be done, I might work all night long.

It was a case, when I first took over as chief engineer, I worked for possibly a week and a half or two weeks day and night to get the station into shape.

Q. Well, was there any overtime pay?

A. No.

Q. Well, did any people in the Engineering Department get overtime?

A. Some of the announcers would get overtime.

Q. But not the technicians? There's no overtime?

A. Well, it's possible—be out on a remote job,

(Testimony of Ralph Click.)

something of that sort, they would put in for overtime and receive it.

Q. Did you ever put in for overtime?

A. No, sir.

Q. Were you ever told that you did not have the right to overtime? A. No, sir. [150]

Q. Did you ever ask for a pay raise?

A. Yes, I have.

Q. What was said on that?

A. We were promised when the station first organized there would be a semi-yearly pay increase.

Q. That's to all people in the Engineering Department? A. Yes.

Q. Do you know if that was granted?

A. Once, I believe, when Mr. Reinholdt was Manager.

Q. Did you get that with all the other technicians? A. Yes.

Q. In other words, you were considered in the same group with them as far as that pay raise was concerned? A. That's right.

Q. Now, those restrictions on the use of gasoline?

A. You mean from this credit card incident?

Q. Yes. A. Yes.

Q. Now, did you instruct the technicians under you as to how to operate the equipment?

A. I did.

Q. Was that pursuant to the directions of Mr. Barnett? A. Yes.

(Testimony of Ralph Click.)

Q. Did you make out their sechdules for them when they first went to work? [151]

A. Yes, I did.

Q. Did those schedules first have to be approved by anyone? A. By Mr. Barnett.

Q. By Barnett. Could you order overtime for any of these engineers if you so desired?

A. I couldn't order it. I could ask them.

Q. Well, on your own, could you order it without checking with Mr. Barnett? A. No, sir.

Q. Could you recommend changes in the job assignments? A. No, sir.

Q. Now, could you recommend the hiring of anyone? A. No, I couldn't.

Q. Well, now, did Mr. Barnett ever check with you regarding the hiring of new employees?

A. Yes, he would.

Q. Would he follow your recommendations?

A. On one instance, he didn't.

Q. What instance was that?

A. A boy by the name of Wyatt. Mr. Barnett brought him over there and asked me to make an audition of the recording, and he asked me what I thought of him, and I said, "I think he will be all right. He isn't too smooth at the present, but we are desperately in need of an operator." And Mr. Barnett turned [152] him down.

Q. Now, when Mr. Liebman went to work there, did he check with you?

A. He called me in the office one day and mentioned the fact that he was going to make Mr.

(Testimony of Ralph Click.)

Liebman head of the staff. He asked me what I thought of it, and I told him I thought that one sports announcer was all the station could afford.

Due to the fact that he had been thinking for a long time of laying off one of the technicians, I thought it was uneconomical to employ another sportscaster and dispense with another technician which we badly needed.

Q. And was Mr. Liebman hired?

A. He was.

Q. And he didn't follow your recommendation?

A. He did not.

Q. Now, did you ever submit—there's been some testimony here—during Mr. Barnett's tenure there, did you ever recommend the firing of any technicians? A. Only Mr. Beckett.

Q. And your recommendation, was it followed?

A. No.

Q. Could you give these people under you a pay raise? A. No, sir.

Q. As a matter of fact, did you know what they were making? A. No, sir. [153]

Q. Now, regarding the making out of schedules, were you specifically instructed to do that by anyone? A. Not specifically, no.

Q. Well, when you first took over as chief engineer, did that become part of your duties?

A. It did, yes.

Q. Is that a routine duty for the chief engineer?

A. It is.

Q. How often was the schedule changed?

(Testimony of Ralph Click.)

A. Once the schedule was posted, it usually stayed on the wall and was effective until possibly a change in personnel, then there would be a new schedule arranged.

Q. Would that last for months generally?

A. Yes.

Q. Did that have to have the approval of anyone when it was made?

A. Mr. Barnett.

Q. Now, during the time that you were there, you people in the technical department, when new ones came in, who interviewed these applicants?

A. Mr. Barnett.

Q. What does the term "chief" mean in relation to chief engineer?

A. Well, he could be several different meanings, depending on the size of the station. Now, at a large station like KNX [154] in Los Angeles, for example, the chief engineer is the next man to the manager.

In a small station, like KWIN, the chief engineer is merely a glorified mechanic. I mean by that, he's really the chief technician. The term engineer is a misnomer.

Q. In other words, you're the number one engineer?

A. That's right.

Q. Do you know what your experience was in comparison to the other people in the Engineering Department?

A. You mean my radio experience?

Q. Yes.

A. Yes, I did.

(Testimony of Ralph Click.)

Q. Well, how much experience did Mr. George have?

A. Mr. George came straight from Multnomah College in Portland.

Q. And he's the man that took your job when you were discharged? A. That's right.

Q. How much experience did Mr. Smith have?

A. Mr. Smith was employed straight from the Oregon Vocational School in Klamath Falls.

Q. And how about Chuck Fields?

A. Chuck Fields? I don't know how much experience he had. He had quite some experience before he came to KWIN. He also was a graduate of Multnomah College of Portland. [155]

Q. Did you work a regular scheduled shift with the others?

A. I worked a relief shift and regular schedule.

* * *

Q. (By Mr. Renoud): Mr. Click, after your discharge on September 2nd, 1949, were you sent to any other station for work by the union?

A. Yes, I was.

Q. Were you sent to Coquille, at the station there? KWRO? A. Yes, I was.

Q. Did you make application there to go to work? A. I did.

Q. Were you sent to Grants Pass for a job?

A. I was.

Q. To Bend? A. Yes.

Q. On any of those stations, did they take your application? A. They all took it.

(Testimony of Ralph Click.)

Q. Did they give you any reason for not hiring you when they [156] had an opening?

A. None.

* * *

Q. (By Mr. Renoud): Mr. Click, did you go out to other stations seeking employment?

A. I went to practically every station outside the metropolitan area of Portland. I contacted the stations in Washington, Idaho, Eastern Oregon, with the same result. [157]

* * *

Cross-Examination

By Mr. Blair: [158]

* * *

Q. (By Mr. Blair): Did you work with Mr. Reinholdt at Albany? A. I did.

Q. Mr. Reinholdt was the one that hired you at Station KWIN? A. He was.

Q. What was your title when you came down here?

A. I don't know as I had any until the station went on the air. Then, I was the announcer-operator.

Q. Did you relate in your previous testimony that you came down here to supervise putting the station back on the air? A. That's right.

Q. And what about this man, Mr. Rush, who was here at the time, what was his title?

A. Chief engineer.

Q. Were there two chiefs on the job, is that it?

(Testimony of Ralph Click.)

A. No, sir.

Q. Well, who was it—getting the station back on the air?

A. Mr. Rush officially, actually he was drunk all the time.

Q. Well, I didn't ask you if he was drunk all the time. I want to know who was the chief engineer on the job?

A. Rush. [159]

* * *

Q. (By Mr. Blair): While Mr. Reinholdt was Manager of the station, there occurred the firing of one Mr. Maston. It's our understanding—it's my understanding that your testimony here is that you fired Mr. Maston?

A. I did.

Q. Do you recall at any time subsequent to that that you were given instructions not to fire anyone?

A. No, sir.

Q. So then, it could be assumed that, inasmuch as you had the right to fire Mr. Maston if it occurred in your department, that you still had that?

A. Not necessarily.

Q. Was there ever any time when that order was rescinded or when you were told specifically that you were not to fire anyone?

A. I was told by Mr. Reinholdt, when he was away, that I was [160] in charge of the station.

The next time he went away on a trip, he said, "Take care of things, but don't start throwing your weight around."

Q. I asked you a specific question.

(Testimony of Ralph Click.)

Were you ever told that you were not to hire or fire anyone after that date? A. No, sir.

Q. After the firing of Mr. Maston?

A. No, sir.

Mr. Merrick: Now, let's make this more specific. I want to make an objection here.

I want to find out first if this question covered Mr. Barnett's tenure as Manager also.

Mr. Blair: I asked this witness if subsequent to the firing of Mr. Maston he had ever received any instructions from anyone not to hire or fire.

Trial Examiner Parkes, II: If you have any questions on that, you can clear it up on redirect.

A. I received instructions from Mr. Barnett.

Q. (By Mr. Blair): What were your instructions from him?

A. That he would do the hiring and firing.

Q. When did he give you those instructions?

A. Shortly after he became Manager.

Q. Do you recall the specific time?

A. It's in the record. [161]

Trial Examiner Parkes, II: Well, tell us again please?

A. The case of Ralph Beckett, who was unsatisfactory, and I went into Mr. Barnett's office one morning and told him that he was unsatisfactory and I was going to replace him.

Q. (By Mr. Blair): Was Mr. Barnett Manager at that time or Mr. Reinholdt?

A. Mr. Barnett.

Q. You're sure of that? A. Positive.

(Testimony of Ralph Click.)

Q. Also in your testimony, you touched upon the fact that there were occasions when you were given credit by both Mr. Reinholdt and Mr. Barnett for your good work, but that never at any time had you been criticized. Is that true?

A. To the best of my knowledge, yes.

Q. Do you recall any specific dates upon which you were given credit for your work?

A. No, I do not.

Q. And you don't have any specific dates in mind that you were criticized? A. No, sir.

Q. You just don't remember specifically?

A. I don't recall any specific instance, no, sir.

Q. Then, how do you pin down the fact that you had not been criticized, but that you had been given credit?

A. A pat on the back is much nicer to take than a slap on [162] the jaw.

Q. It's well remembered, I take it?

A. That's right.

Q. Can you give us some approximate time when this occurred, or what the occasion was?

A. No, I can't say specifically what the date, what the case was. I know on numerous occasions Mr. Reinholdt complimented me.

Q. So, actually it's hard for you to remember when you were given credit for anything and it's equally hard for you to remember that you were criticized? A. I didn't say that.

Q. Well, I'm asking you that.

A. I said I can remember a number of occasions

(Testimony of Ralph Click.)

of getting a "work done well" but I can't tell you the job or the date or the time of the day.

Q. But you remember no time when you were ever criticized for anything in connection with your work?

A. Oh, possibly I have had criticism, but I told you I hadn't remembered them. Not to my knowledge, I can't put my finger on them.

Q. Neither can you lay your finger on a specific time when you were given credit, is that right?

A. No, sir. [163]

* * *

Q. (By Mr. Blair): Did you use the credit card for your own use? A. I did.

Q. And that is admitted? A. It is.

Q. You were censured for that by Mr. Barnett?

A. I was.

Q. In a gentlemanly way? A. Yes, sir.

Q. Now, in regard to this man Clark being a visitor at night to the station, you had received instructions some time in the past, or you say that you were to admit no one to the station?

A. That's right.

Q. And who issued that order? [164]

A. Mr. Hamaker.

Q. Did he ever rescind that order?

A. Not to my knowledge.

Mr. Merrick: Who is Mr. Hamaker for the record?

The Witness: Mr. Hamaker is President of the Corporation.

(Testimony of Ralph Click.)

Q. (By Mr. Blair): Did you have personal knowledge that Mr. Clark had been in the station and using equipment during your absence?

A. No personal knowledge other than the night he was there that I was operating in the station late.

Q. Was he using the equipment at that time?

A. He was using the telephone at that time.

Q. Well, now would you explain for the benefit of the Examiner what we mean by the term "equipment" other than the telephone?

A. A radio station has a great deal of technical equipment. I was informed by the watchman on nights previous Mr. Clark had been previously there trying to play records for his own amusement.

Q. That might have been something that might have been going out over the air?

A. Very possibly, yes. If he turned on the switch, it went on the air.

Q. And all of this came through the watchman and you had no [165] personal knowledge of it?

A. No, sir.

Q. So, the night in question, all you saw him using was the telephone?

A. That's right.

Q. There is no F. C. C. rule against the use of the telephone in the station, I take it?

A. Not that I know of.

Q. So then, actually the question on the night we refer to was not of a serious nature?

A. Other than the fact that he was in the station when the station was closed.

(Testimony of Ralph Click.)

Q. Did you subsequent to that—could you give us the approximate time that Mr. Hamaker or anyone else in authority in the station gave you instructions not to leave anyone into the station other than the chief engineer or the Manager?

A. Shortly after we were on the air, March the 9th, 1947.

Q. You don't recall the specific occasion?

A. No, I don't.

Q. Do you recall the statement made by Mr. Barnett when he talked with you about Mr. Clark—do you recall the statement made to Mr. Barnett that you would no longer as chief technician be responsible for any of the technical equipment in the station?

Did you make such a statement? [166]

A. I did.

Q. Do you think that was in keeping with your position as chief technician?

* * *

A. Under the circumstances, I thought it was right. If everyone in the station were permitted to come down there after hours, turning on equipment, I felt I had the right of no longer having the responsibility of taking care of it.

Q. (By Mr. Blair): Well, we just got through going over this matter, Mr. Click. I'll refresh your memory.

Now, to the best of your knowledge personally, you had no knowledge that Mr. Clark or anyone

(Testimony of Ralph Click.)

else had been playing around with the equipment at night?

A. All I had was information given to me by the watchman who informed me that Mr. Clark had been there and using the equipment.

Q. But you had no personal knowledge?

A. No, sir.

Q. Wouldn't it have been better for you to have referred the matter to the station Manager under the circumstances when the man was not actually a member of your department? [167]

* * *

Q. (By Mr. Blair): What was the particular occasion on which someone in authority, and who in authority, by the way, made this statement to you about pay raises at the time the station went on the air? A. Mr. Reinholdt.

Q. And what did he specifically tell you about that?

A. He didn't tell it to me in person. It was more or less general information for all of the employees.

Q. How did you get the information?

A. From Mr. Reinholdt.

Q. Well, if he didn't tell it to you, how could you get it?

A. I didn't say that. I said he didn't tell it to me alone. It was information that he passed out to all the employees that as soon as the station got on its feet we would receive a regular semi-yearly increase.

(Testimony of Ralph Click.)

Q. Did he say a regular semi-yearly raise?

A. Words to that effect, yes.

Q. Well, did he say that?

A. Words to that effect.

Q. That isn't what I want to know.

What specifically did he say, do you remember?

A. I don't remember.

Q. You don't remember exactly what he said, so he could have said something else? [168]

A. He could have, yes.

Trial Examiner Parkes, II: What was the general nature of his statement?

The Witness: That was the general nature of the statement.

Q. (By Mr. Blair): Did you make the statement that Mr. Liebman was hired over your objections? A. I don't recall it.

Q. Do you recall when Mr. Liebman was hired?

A. I do.

Q. Did you have objections to his being hired at the time? A. I did.

Q. Did you have some specific reasons?

A. The reason given was that I thought it was uneconomical to the station to employ another sports announcer when we had one who was very capable of taking care of any sports programs.

Q. Was he working in your department?

A. No, he wasn't.

Q. What was your interest in the matter?

A. I was asked by the Manager what I thought of it.

(Testimony of Ralph Click.)

Q. Then, as Manager of the station, Mr. Barnett was interested in your opinion as to the operation of your particular department and the people surrounding it?

A. He must have been, yes, sir. [169]

* * *

Q. (By Mr. Blair): Do you feel that Mr. Barnett had considerable faith in you in asking you whether Mr. Liebman should be hired?

A. Well, I wouldn't say that.

Q. Previous to the election that was held on August 29th, had Mr. Barnett at any time by any means threatened you in any manner?

A. No, sir.

Q. Had he ever suggested to you that anything might happen should you go along with the union?

A. No, sir.

Q. So that up to the time that you voted in the election, there was nothing that Mr. Barnett said or in Barnett's manner that would indicate that he would do anything in the form of any reprisal to you because of the National Labor Relations Board election or your voting in it?

A. Nothing other than the fact that it put a brown taste in his mouth.

Q. What did that comment mean to you? [170]

A. Well, it meant that he—that meant that he was after my scalp.

Q. I'd like to be informed on this. This is new to me.

How does the statement, it didn't leave a good

(Testimony of Ralph Click.)

taste in his mouth, indicate to you that he was after you?

A. It was the part that he added on after that statement, that he wouldn't rest until he got it out.

Q. Until he got what out?

A. The dark brown taste in his mouth, the bad taste in his mouth.

Q. Well, how did that reflect upon you? Did he say to you specifically:

“Ralph Click, if this happens, I'm going to do something to you.”

A. No, he didn't.

Q. So then, the dark brown taste beyond being a comment of his did not indicate that he was going to do anything to you personally?

A. No, sir. [171]

* * *

Trial Examiner Parkes, II: A thought occurred to me a while ago.

The complaint alleges that the Respondent is an Oregon corporation.

Will Counsel stipulate to that?

Mr. Blair: We will.

Mr. Merrick: I had meant to strike the paragraph as an unnecessary plea.

At this time, Mr. Examiner, the General Counsel rests his case. However, we may desire to call rebuttal witnesses if necessary. [172]

* * *

EDWARD P. BARNETT

a witness called by and on behalf of the Respondent, having been previously sworn, was recalled and testified as follows:

Direct Examination

By Mr. Blair:

Q. Mr. Barnett, did you at any time since your taking over the position of Manager of Station KWIN issue instructions to Mr. Ralph Click that he was not to supervise or to discharge, hire or discharge any employee?

Mr. Merrick: Wait a minute. I'm going to object to this question at the outset, not that I have any particular objection to this one, but I want to object to these leading questions.

This witness is no longer on cross-examination and I think that the witness himself should testify.

The question itself is leading. It's framed in such a manner that it puts the answer in the witness' mouth.

Q. (By Mr. Blair): Mr. Barnett—rephrasing the question for the moment—would you tell the Trial Examiner just what instructions, if any, you gave Ralph Click in regard to his job as supervisor after taking over the job of Manager of the station?

Mr. Merrick: I'll object to the use of the term "supervisor." That's an assuming fact, not in evidence. That's for the Board to determine whether or not this man is a supervisor.

Trial Examiner Parkes, II: Well, that's one of

(Testimony of Edward P. Barnett.)

the issues [173] in the case, but the question may stand.

The witness may answer.

A. As I stated in my previous testimony, there are certain circumstances under which a department head, such as the chief engineer, can fire a man, the same type of circumstances that this one man that was mentioned, Maston, had been fired before.

It is true, even at that time, that the chief engineer at the station could not in the presence of the Manager walk in and fire a man.

The situation was never that, but there are certain circumstances in which he can, and those circumstances are situations that have never been revoked.

Q. (By Mr. Blair): Was Mr. Click given the prerogative of being an actual chief in every sense of the word in your absence?

A. Yes. When I first took over as Manager of the station, one of the first things I did was talk to Mr. Click because, realizing I was no technician myself, I had to give him full range as far as the technical end of the station was concerned. I mean, I had no choice. I was going to have to put a lot of responsibility into his hands, I told him, because I'm no technician myself.

Q. On this particular occasion—I take it there are two of them—but on the occasion when the status of Mr. Clark as an employee of the station

(Testimony of Edward P. Barnett.)

at night came about, did you talk to [174] Mr. Click in a rather commonplace tone?

A. You mean when I questioned his reasons for making Clark leave the premises, is that the occasion?

Q. Right.

A. Yes, in a very normal tone.

Q. Did he relate to you at that time that there was a question raised by other operators as to Clark's using equipment at night?

A. No, to my knowledge there was nothing stated outside of the fact that he didn't think any personnel should be in the station after eleven o'clock.

Q. He made no charge against Clark using equipment at that time?

A. With the exception of the telephone.

Q. Do you recall the statement that Mr. Click made to you at that time when you advised him that Mr. Clark shouldn't be in the station?

A. Yes. He said, "If that's the policy of the station, I will no longer be responsible for the technical equipment, the condition of the technical equipment at the station from that date on."

Q. What would you take that to mean? [175]

* * *

A. Well, I took it to mean exactly what he said, that he would no longer be responsible, and his job was to be responsible.

Q. (By Mr. Blair): Who then, other than Click, was to be responsible?

(Testimony of Edward P. Barnett.)

A. His replacement.

Q. At the time you called Mr. Click in to tell him he was through, which I take it was the date of September 2nd, could you relate for the benefit of the—I might put in a comment here—you have heard the testimony in regard to that meeting, will you tell in your own words, tell the Trial Examiner what occurred at that meeting?

A. Yes, I called him in. It was in the late afternoon, approximately—well, between four and four-thirty. I called him in and said I was going to have to let him go, and he said—or words to the effect, what are the reasons or why he's being discharged.

And I told him that he was inefficient, dishonest; he had caused dissension among the employees, I felt; and that I wanted him to leave—I had a check for him—and I wanted him to get out of the station right away.

The reason for that was the fact that I didn't feel it was good for the station to have a discharged chief engineer [176] at the station. We were on the air at the time.

It wasn't necessarily a reflection against the man himself at that time, but I didn't want to take the chance. That's all.

I mean, after all, I had discharged him—I'll say at four-thirty—and to rest in my own mind, I just as soon he was out of the station in as quick a time as possible. Considering the fact that the rest of the

(Testimony of Edward P. Barnett.)

employees were off at five, I wanted him to go by that time.

Q. What was your manner of speaking, or your manner of treatment at that time?

A. I considered it normal. I mean, I didn't raise my voice.

Q. You don't consider your ears were white at the time? A. No.

Q. Was the reference made that you were mad?

A. No, I wasn't mad. I'll tell you, there's no employer that ever discharged a man with a normal feeling. I mean, I don't like to discharge a man, but I wasn't mad, upset, I imagine so. I believe that would be normal under the circumstances.

Q. At the time that you replaced Ralph Click with Phil George, did you know that he hadn't had previous experience?

A. I knew of his service experience, yes, and I knew of his schooling.

Q. Would it have been proper, or was it proper for you to [177] put him in charge of the station? Did his license qualify him?

A. His license did, yes.

Q. So, therefore, as long as you were satisfied with his qualifications and he had the proper license, he was at least in the eyes of the F. C. C. entitled to handle the job? A. Yes.

Q. Do you remember of any time of your complimenting Click for his good work?

A. There was bound to be times with any employee as long as he's with you.

(Testimony of Edward P. Barnett.)

Q. Other than the incident relating to the credit card, do you recall having criticized him for certain operations?

A. Yes, I had to criticize him. I had to criticize him for—well, in this particular case here, the Wallace Clark deal. I criticized him for the credit card.

I don't recall any particular incident that I called him in and laid him out about anything. Normal corrections, I mean actually they're corrections without being criticisms.

You can correct a man without criticizing him.

Q. At the time you discharged Click, could it have been said that he was cold to all of the facts in the case that you related to him at the time you discharged him?

A. The facts were known to him. Is that what you mean?

Q. Did he know those facts from previous discussion with you? [178]

A. Oh, yes.

Mr. Blair: That's all.

Cross-Examination

Q. (By Mr. Merrick): Right on that line of questions, what previous discussion did you have with Click regarding these facts that he referred to?

A. Well, I had discussed the credit card situation. I had discussed the time when he had ordered Clark out, and I discussed his attitude shown when

(Testimony of Edward P. Barnett.)

I tried to find out the reason for putting the man out the previous night.

Q. Those are the two instances you speak of?

A. Yes.

Q. Now, I believe you testified that when you questioned Click regarding this trouble with Clark, he said that no other personnel should be in the station after eleven, is that right?

A. Yes, outside of the night man.

Q. In other words, it was his recollection there was some rule to that effect?

A. In his own mind, yes.

Q. Did you set him straight on it?

A. I did.

Q. Now, did Mr. Click have any other further trouble with Clark after this one incident you refer to?

A. Not to my knowledge, no. There might have been something between them, but it wasn't brought to my attention. [179]

Q. And did Clark leave the station some time in June?

A. He left a short time after that, yes.

Q. And what was the caliber of Click's work after Clark left?

A. After Clark left, the caliber of his work regarding the wire equipment?

Q. Maintenance of equipment, and all of his work that he was required to do.

A. Well, of course, I believe it was after Clark left that the rodeo situation came up. I believe, if

(Testimony of Edward P. Barnett.)

I remember right, that came up after Clark's dismissal. I forget the exact time that he quit.

Q. Well, what was the caliber of his work after the rodeo situation?

A. After the rodeo situation, his work seemed all right.

Q. But then all during this time, were you thinking of firing him?

A. As I said, the idea was, he was scheduled for release. Naturally, I kept my eye open as to what was going on after I felt as though I should hold on to him until he physically recovered.

Q. Well, was there any particular reason why you picked Friday, September 2nd, at 4:20 to fire him, to notify him?

A. Well, I wanted to wait until after the election. No, I mean, I just took that date. I wanted to wait for a few days after the election to see if anything came up from it. Nothing [180] did. So, he was just released on the second of September.

Q. As a matter of policy, don't you give two weeks notice to people you're discharging or laying off?

A. When they are discharged for cause, no.

Q. How about when they are discharged without cause?

A. Discharged without cause?

Q. Laid off, for example.

A. It's a situation that never came up.

Q. Do you have any policy on it?

A. I would say that if they are just laid off

(Testimony of Edward P. Barnett.)

that they would normally be laid off with notice.

Q. You require ordinarily notice from people who are quitting, do you not?

A. Yes, I expect it.

Q. Two weeks' notice? A. Yes.

Q. Now, regarding this conversation on the date that Mr. Click was discharged, was the complete conversation, as far as you're concerned, he was inefficient, dishonest, caused dissension, and you had his check for him when you told him to get out, is that it? A. Yes.

Q. Nothing was said about the Clark incident, regarding the cartridges, and so forth?

A. I don't believe that I went into detail, [181] no.

Q. Nothing was said about the rodeo?

A. No.

Q. And nothing was said about wilful neglect of duty?

A. Outside of the fact that I considered that he had been wilfully neglectful.

Q. Nothing was said about incompetence?

A. Yes, I did tell him that I thought he had been incompetent.

Q. Is there anything else that you'd like to add to that statement?

A. Not that I can recall, no.

* * *

Q. (By Mr. Merrick): What was it you said, there was no reflection on Click, that you just couldn't take the chance any longer?

(Testimony of Edward P. Barnett.)

A. Oh, yes. I stated the reason I told him to leave the premises as soon as I did was the fact that I didn't feel as though a discharged chief engineer should be on the premises [182] any longer than possible.

I wasn't referring necessarily—I mean I wasn't reflecting on the man right then—I mean, to me he was a chief engineer who had been discharged and should be off the premises right away.

I figured that his frame of mind wouldn't be such that he could work to the advantage of the station on the premises for very long.

Q. Do you think your endorsement of unsatisfactory on his license was warranted under the circumstances? A. Absolutely.

Q. Since receiving this communication from the Federal Communications Commission, do you still have that viewpoint? A. Absolutely.

Q. Did you check to find out what unsatisfactory actually meant in this instance?

A. Oh, yes.

* * *

Q. (By Mr. Renoud): Mr. Barnett, as Manager of the radio station, you are familiar with the F. C. C. requirements to hold your license, to hold the station license? A. Yes.

Q. Is it your impression that under the F. C. C. license, anybody can come in and have access to the broadcasting equipment there? [183]

A. If anything goes wrong if the station is on the air. At a time when they're not supposed to

(Testimony of Edward P. Barnett.)

be, or something of that nature, that would be against the Commission's regulations, yes. [184]

* * *

Q. (By Mr. Renoud): To your knowledge, is non-licensed personnel permitted to have access to the broadcast equipment?

A. A licensed person should be on hand with the equipment, while the equipment is being used for broadcasting.

If the equipment is idle, if the transmitter is turned off, we do not have to have a licensed man on the premises.

* * *

MARK S. HAMAKER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Blair:

Q. For the benefit of the record, Mr. Hamaker, will you give your full name and title?

A. Well, it's Mark S. Hamaker, and I am President of the Rogue Valley Broadcasting Company, Incorporated.

Q. You live where?

A. 324 Norton Street, Ashland, Oregon.

Q. As President of the Rogue Valley Broadcasting Company, do you issue certain instructions from time to time to Ed Barnett as Manager?

(Testimony of Mark S. Hamaker.)

A. No, nothing relative to the operation of the station, just the—more or less—the financial management and the over-all operation and results of the station.

Q. Have you ever given specific instructions on the operation of the station to Mr. Reinholdt?

A. No.

Q. Have either of these gentlemen ever conferred with you about certain things in regard to the operation of the station? Such as, the discharge of employees?

A. Yes, more or less in a side manner, you might call it. It wasn't the purpose of the contact to discuss any hiring or firing.

Q. Did Mr. Barnett ever have occasion to discuss with you the matter of the discharge of Ralph Click?

A. Mr. Barnett told me that he was going to have to replace him. [186]

Q. Do you recall about what time that that took place?

A. Well, that was some time in early June. I don't remember the exact date.

Q. Previous to any indication by anyone that the union was interested in organizing the employees?

A. Yes, it absolutely was. I had heard nothing of any union activity of any nature at the time, or in fact some time after that.

Q. Did you give Mr. Barnett any specific instructions at that time?

(Testimony of Mark S. Hamaker.)

A. Well, nothing more than I told him that was the thing to do, if he wasn't satisfactory, to let him go.

Q. Did you talk with Mr. Barnett at any time after that about the same situation?

A. Oh, yes.

Q. Will you relate that?

A. Ed said he was going to have to let him go. So at some time after that—I don't remember how long—I heard Ralph on the air again, and the next time Ed was up, why, I said, "I thought you were going to fire Click."

Then he went ahead and told me the story about his appendix and his appendicitis. He told me, he says, "I just haven't got the heart to fire a man while he's in the hospital, down on his back," and he says, "give him a chance to get back on his feet and then," he says, "I'll let him go." [187]

Q. Do you know if that was carried out?

A. Yes, it was.

Mr. Merrick: What was carried out?

The Witness: The discharge of Mr. Click.

* * *

Q. During the first conversation you had regarding the discharge of Mr. Click, which occurred some time early in June, was the matter of the unionization of the station discussed at the same time? A. Oh, no.

Q. You hadn't heard anything about it?

A. No, I didn't know anything about it, never

(Testimony of Mark S. Hamaker.)

been anything mentioned about it. I never heard anything about it.

Q. So, the first you knew about it was some time later when the communication was received from the National Labor Relations [188] Board, is that correct?

A. That's right. Ed notified me when he got this letter, he told me.

Q. Has it ever been the practice of either yourself or any of the Directors of the company to set up policies for the station and its operation?

A. No.

Q. That is, as to who might enter the station premises and who might not? A. No.

Q. I take it by that answer that it was left entirely to the Manager of the station to make those decisions? A. Yes, it was.

Q. That was his responsibility?

A. Yes.

Mr. Click made the statement that I had instructed him to not permit anyone to enter there after eleven o'clock.

Well, if I ever made that statement, it's certainly beyond my knowledge. I have no recollection of ever making such statement.

Q. You never issued any order of any kind as far as the actual operation of the station?

A. No, not to my knowledge.

Q. Did Mr. Click ever approach you personally during any of the time that you might have had a conversation with him? [189]

(Testimony of Mark S. Hamaker.)

A. Oh, yes. He'd come up and cry on my shoulder every once in awhile. I'd send him right back to the station manager. I told him that I wasn't running the station, that I had men hired down there to do it, that is, the corporation did, and that if he had any troubles, why, get them ironed out with them.

I wasn't mixing up into it at all.

Q. Was that true while Mr. Reinholdt was manager? A. Yes.

Mr. Blair: That's all.

Cross-Examination

By Mr. Merrick:

Q. That was also true during Mr. Reinholdt's tenure? A. Yes.

Q. Where is Mr. Reinholdt now?

A. Sitting right there (indicating).

Q. Did the discharge of Ralph Click have to be cleared with you before it became effective?

A. No, there is no hiring or firing through any of the corporation, that has to be approved by any of the corporation heads.

That's entirely up to the station manager.

Q. Well, as a matter of fact, was it though?

A. Oh, yes.

Q. It was? A. Yes. [190]

Q. Then, it was cleared through you?

A. What is it?

Q. The discharge was cleared through you?

A. No, it was not. There has never been any dis-

(Testimony of Mark S. Hamaker.)

charge of any employee that had ever been cleared through me other than the station manager.

Q. However, they did confer with you?

A. He mentioned it, but he was not there on that particular business at all. Actually, he did, yes, he mentioned it.

Q. Do you have anything to say about the discharge on September 2nd—did you have anything to say about the discharge of Click on September 2nd?

A. No, I never had anything to say about the discharge of anyone at any time.

Q. Do you know if the corporation has any policy regarding the discharge?

A. They have no policy. That's entirely up to the station manager. That is, that's their policy.

* * *

ROBERT E. REINHOLDT

a witness called by and on behalf of the respondent, being [191] first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Blair:

Q. Will you state your full name for the record?

A. Robert E. Reinholdt.

Q. Your residence?

A. 605 Elkader, Ashland.

Q. Your occupation at the present time?

(Testimony of Robert E. Reinholdt.)

A. I'm a partner in a general insurance agency, in Ashland.

Q. How long since you've been manager of Station KWIN?

A. I left the station on September 1st, 1948.

Q. Were you the one who, as station manager, employed Ralph Click?

A. I was.

Q. He had worked with you previously?

A. Yes, we were both on the same staff at KWIL in Albany.

Q. Will you relate to the Trial Examiner the method of procedure in hiring Mr. Click and what his duties were to be when he was hired?

A. Well, I came to Ashland the fore part of December of 1946 to manage the station and had been there ten days when the station burned, and prior to that time, during that ten days, I noticed some dissension on the staff, relating to the staff, and the relations with the staff and the chief engineer at the present time, and I wasn't too satisfied with him. [192]

Following the fire, we were obliged to rebuild the station, and so, knowing that this man, as has been brought out previously here, occasionally was a drinker, I thought that I had better have someone on the staff that I knew was able to help me and help the existing chief engineer rebuild the station, and eventually step into his shoes should something come up in a way that would lead to the existing chief engineer's discharge.

That occasion came about after the station was

(Testimony of Robert E. Reinholdt.)

on the air—back on the air following the fire. The man was drinking on the job, and he was being discharged and Mr. Click replaced him on the job.

Q. What status did Mr. Click have after he was placed on the job—I believe in Mr. Rush's place?

A. Yes, he was appointed chief engineer on Mr. Rush's discharge.

Q. What authority was he given by you as manager of the station at that time?

A. Well, the way that I had the station set up, it was on the basis of three departments actually; first of all, the sales department, the program department, and the engineering department.

Mr. Click was to have complete charge of the engineering department. He was charged with the equipment. While it didn't need much maintenance, since it was brand new equipment, he was [193] to take care of any necessary work on the equipment, service it and take care of the operation of the technical end of the station.

Q. Was he given initial compensation for his services as chief? A. Yes.

Q. That is, in relation to the other operators?

A. Yes, he was paid a higher rate of salary than the other operators. To my recollection, on his appointment as chief engineer, his salary was raised at least to the point where the former chief was. I don't recall just exactly what the figure was.

Q. During the time you were manager, did Mr. Click have occasion to fire at least one employee?

A. Yes, he did.

(Testimony of Robert E. Reinholdt.)

Q. Was that with your final approval?

A. Yes, it was.

Q. And at any time subsequent to that, did you take away from him any authority to do likewise?

A. No, sir.

Q. Then, to your knowledge, no authority was taken away from him during your term as manager of the station?

A. During my tenure at the station, he had that authority to fire an operator that was obviously disregarding the rules of the operation of the station. The head of the department [194] was to oversee that.

When he came on the job in this particular instance and this man was drunk, he did exactly right by setting him loose.

Q. Was Mr. Beckett on the job at the time you left or before you left?

A. He was on the job before I left. I hired Mr. Beckett.

Q. Do you recall anything surrounding the circumstances of his discharge or lay-off? Was that done by Mr. Click or by yourself?

A. Well, Mr. Beckett was discharged when Mr. Barnett was manager of the station as I recall.

Q. That was some time after you had left?

A. Yes.

Q. Was Mr. Click required to do any amount of traveling for the station during the time you were manager.

A. The traveling that Mr. Click did when I was

(Testimony of Robert E. Reinholdt.)

manager of the station, with the exception of during football season when he generally traveled with me in my car, with only one exception that I can remember, and that was a trip that he had to make to Monmouth—the traveling that he did was merely from town to the station and to the various locations. Perhaps we'd have one in Medford more often than it was in Ashland, that is, remote equipment, and maybe once or maybe twice a week to Medford to the radio parts supply house that's located here.

Q. Was he ever compensated in any extra manner for any of [195] these trips, or was that supposed to be taken care of by his normal salary?

A. Well, not directly, no. I can recall one instance where we went to San Francisco following the football season and during the football season as kind of a bonus. I don't remember all of the facts surrounding that.

When we traveled, of course, his expenses were paid, and when I was manager of the station, we kinda had the operation of the station set up on every man more or less doing his job, and if it took five hours today to do it, fine, or ten hours, why, that was fine too.

Q. Did Mr. Click ever complain to you that he should have been paid for any of his traveling that he did?

A. Once in a while—or I shouldn't say it that way. I should say once or twice perhaps he came in and asked for extra gasoline. We usually worked something out on that.

(Testimony of Robert E. Reinholdt.)

Q. So that every time he asked for anything additional that he felt he was entitled to, in some maner or means he was compensated for it?

A. We tried to do that, yes.

Mr. Blair: That is all.

Cross-Examination

By Mr. Merrick:

Q. What did you say your business was at the present time?

A. I'm a partner in a general insurance [196] agency.

Q. Do you have any financial interest in this broadcasting company? A. No, sir.

Q. Does your partner?

A. Yes, he is on the Board of Directors.

Q. Who is this chief who was working down there when you first went to KWIN?

A. Floyd Rush.

Q. Did you credit Click's statement that he was a drunkard?

A. Well, I—put it this way that he was an alcoholic.

Q. On rebuilding the station, did he do much of the work himself?

A. Quite a bit. I think that—my recollection is he was primarily responsible for it. Ralph was working with him. They were more or less on a share and share alike basis. I remember there were some arguments on whose ideas should go where

(Testimony of Robert E. Reinholdt.)

and, in other words, one man—Click would get an idea certain things should be done one way, and Rush would get an idea that the same thing should be done another way.

I don't have technical background. It was up to me to more or less weigh the thing and make a decision on it, probably a fifty-fifty proposition.

Q. Well, you brought Click down to make sure the job was done correctly?

A. That's right. [197]

Q. And you have no knowledge of the radio business from a technical standpoint, do you?

A. Other than just a superficial knowledge.

Q. In other words, you were depending on Click?

A. That's right, and he came down with that understanding that I was depending on him.

Q. Now, I'd like to call your attention to the answer of the respondent in General Counsel's Exhibit 1, and referring to the paragraph starting: "That on December 31, 1947, the said Ralph Click . . ." had the right to hire and fire in the absence of the station manager.

Is that statement correct?

A. As far as the period of time that I was at the station, it is essentially correct. As to hiring or firing by the chief engineer, it would be done ordinarily only in case of an emergency.

Q. Or when you were absent?

A. That's right.

(Testimony of Robert E. Reinholdt.)

Q. Was Mr. Barnett present during this time that you were absent? A. I don't recall.

Q. Were you consulted with regard to the drawing of this pleading?

A. No, the only people that have contacted me in this has been an N. L. R. B. man. [198]

Q. How many times did you leave the station when Click was employed there—I mean, for trips, and so forth, when you left him in charge?

A. Well, that's a hard question to answer. For one reason, during that period of time, my mother was ill in Salem, and I was making frequent trips up there. Another reason, there were several meetings that had to be attended.

I just can't recall. They were numerous times.

Q. And you'd leave Click in charge of the station?

A. That's right. He was in charge of the actual operation of the station. It was his responsibility to see that the station got on on time in the morning, got off on time at night, and see that the operators did their work properly, and other than that he had nothing to do with the commercial end of the station, the sale of time, or any of that part.

Mr. Merrick: That's all I have.

Redirect Examination

By Mr. Blair:

Q. Will you tell me just exactly what you meant when you said that Walt came down from Albany—

(Testimony of Robert E. Reinholdt.)

you stated in your previous testimony—in order to be on the safe side, did you actually bring him down to supervise, or did you bring him down because you were worried you might run short if this man went off on a drunk—I'd just like to have it clear in my mind as to what the exact reason was you brought Click down from Albany at the time you reconstructed the station. [199]

A. In those days, at that particular time, first-class radio operators with experience were very difficult to obtain. The only way you could get a man really was to get him out of a school unless you happened to come upon someone who was qualified to act as a chief engineer.

At that time, the only man who was qualified on the staff to be chief engineer was Floyd Rush, and knowing of his condition, I wanted to have a man in the background that could move in and safely take over the controls of the station so far as the chief engineer's post was concerned if something happened to Mr. Rush.

And that was the main object in hiring him, and I told him so at the time and he understood it. In fact, I made that representation to him, should something go wrong with Mr. Rush, that he would be made chief engineer.

* * *

Received September 5, 1950. [200]

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

ROGUE VALLEY BROADCASTING CO., INC.
(KWIN)

Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.87, Rules and Regulations of the National Labor Relations Board—Series 6, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings had before said Board, entitled, “In the Matter of Rogue Valley Broadcasting Co., Inc. (KWIN) and Local No. 49, International Brotherhood of Electrical Workers, AFL,” the same being known as Case No. 36 CA-113 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

- (1) Order designating Frederic B. Parkes II

Trial Examiner for the National Labor Relations Board, dated August 22, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Parkes on August 22, 1950, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner's Intermediate Report, dated November 10, 1950 (annexed to item 12 hereof) ; order transferring case to the Board, dated November 10, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(4) Union's telegram dated November 28, 1950, objecting to any extension of time for the filing of exceptions to the Intermediate Report.

(5) Respondent's letter dated November 27, 1950, requesting an extension of time in which to file exceptions.

(6) Board's telegram dated November 29, 1950, granting all parties an extension of time for the filing of exceptions.

(7) Respondent's telegram dated December 12, 1950, requesting additional time for filing of exceptions to Intermediate Report.

(8) Board's telegram dated December 13, 1950, denying respondent's request for any extension of time.

(9) Respondent's telegram dated December 14, 1950, requesting a further extension of time in order to file in support of exceptions.

(10) Board's telegram dated December 15, 1950,

granting an extension of time for the filing of briefs.

(11) Respondent's exceptions to the Intermediate Report, received December 19, 1950.

(12) Copy of Decision and Order issued by the National Labor Relations Board on March 27, 1951, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 24th day of July, 1951.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 13037. In the United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Rogue Valley Broadcasting Co., Inc. (KWIN), Respondent. Transcript of Record. Petition to enforce an order of the National Labor Relations Board.

Filed July 30, 1951.

 /s/ PAUL P. O'BRIEN,
Clerk United States Court of Appeals for the Ninth
Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13037

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

ROGUE VALLEY BROADCASTING CO., INC.
(KWIN),

Respondent.

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR
RELATIONS BOARD

To the Honorable the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Rogue Valley Broadcasting Co., Inc. (KWIN), Oregon, its officers, agents, successors, and assigns. The proceedings resulting in said order are known upon the records of the Board as "In the Matter of Rogue Valley Broadcasting Co., Inc. (KWIN), and Local No. 49, International Brotherhood of Electrical Workers, AFL, Case No. 36-CA-113."

In support of this petition the Board respectfully shows:

(1) Respondent is an Oregon corporation engaged in business in the State of Oregon, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 27, 1951, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents, successors, and assigns. The aforesaid order provides as follows:

Order

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, Rogue Valley Broadcasting Co., Inc. (KWIN), Ashland, Oregon, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local No. 49, International Brotherhood of Electrical Workers, AFL, or in any other labor organization of its employees, by discharging and refusing to reinstate any of its employees or by discriminating in any other manner in regard to their hire and tenure of

employment or any term or condition of employment.

(b) Interrogating its employees in regard to their union sentiments; and threatening its employees with discharge or other economic reprisals because of their union affiliation or activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form labor organizations, to join or assist Local No. 49, International Brotherhood of Electrical Workers, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Ralph S. Click immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Make whole Ralph S. Click, in the manner set forth in the section of the Intermediate Report entitled "The Remedy," for any loss of pay he may have suffered as a result of the Respondent's discrimination against him.

(c) Upon request, make available to the National Labor Relations Board, or its agents, for examination and copying, all pay roll records, social security payment records, time cards, personnel records and reports, and all other records necessary to an analysis of the amount of back pay due and the right of reinstatement under the terms of this Order.

(d) Post at its station at Ashland, Oregon, copies of the notice attached hereto and marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

(3) On March 27, 1951, the Board's Decision and Order was served upon Respondent by sending

³In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

By /s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington, D. C., this 24th day of July, 1951.

[Endorsed]: Filed July 30, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The National Labor Relations Act, as amended, is applicable to respondent.

2. The Board properly determined that the chief engineer at respondent's radio station was not a supervisor within the meaning of Section 2 (II) of the Act.

3. Substantial evidence supports the Board's findings that respondent questioned its employees concerning their union preferences, and threatened them in the exercise of their right of self-organization guaranteed by the Act.

4. Substantial evidence supports the Board's finding that respondent discriminatorily discharged Ralph Click in violation of the Act.

Dated at Washington, D. C., this 24th day of July, 1951.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

[Endorsed]: Filed July 30, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America
To Rogue Valley Broadcasting Co., Inc., Radio Station (KWIN), P.O. Box 305, Ashland, Oregon; International Brotherhood of Electrical Workers, Local No. 49, AFL, 1417 S.W. 3rd Avenue, Portland, Oregon.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 30th day of July, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on March 27, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Rogue Valley Broadcasting Co., Inc., (KWIN) and Local 49, International Brotherhood of Electrical Workers, AFL, Case No. 36-CA-113,”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days

from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 31st day of July, in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Returns on Service of Writ attached.

[Endorsed]: Filed August 10, 1951.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

United States of America—ss.

The President of the United States of America
To International Brotherhood of Electrical Work-
ers, AFL, 1200 - 15th Street, N.W., Washing-
ton 5, D. C.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10 (e)), you and each of you are hereby notified that on the 30th day of July, 1951, a petition of the National Labor

Relations Board for enforcement of its order entered on March 27, 1951, in a proceeding known upon the records of the said Board as

“In the Matter of Rogue Valley Broadcasting Co., Inc., (KWIN) and Local No. 49, International Brotherhood of Electrical Workers, AFL, Case No. 36-CA-113,”

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You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 30th day of July, in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

Return on Service of Writ attached.

[Endorsed]: Filed August 13, 1951.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

In answer to the petition for enforcement of an order of the National Labor Relations Board, heretofore filed herein, respondent, by and through one of its attorneys, George M. Sennatt, respectfully states as follows:

That the Respondent, Rogue Valley Broadcasting Co., Inc., has notified the National Labor Relations Board that it is willing to and will comply with the decision and order heretofore made by said National Labor Relations Board; that the respondent Rogue Valley Broadcasting Co., Inc., has offered Ralph S. Click, Claimant in the National Labor Relations Board Case No. 36-CA-113, immediate and full reinstatement to his former, or substantially equivalent, position; that upon making said offer the said Ralph S. Click demanded that he be rehired as manager of the Rogue Valley Broadcasting Co., Inc.; that the said Ralph S. Click, after being informed of said offer of reinstatement, has failed to supply your respondent with the necessary data upon which to compute the loss of pay that may be coming to the said Ralph S. Click.

Wherefore, this respondent prays that this court

refuse to take jurisdiction of the proceedings and of the questions to be determined therein, for the reason that this respondent is attempting to comply with the decision and order of the National Labor Relations Board.

/s/ WM. M. BRIGGS,

/s/ GEORGE M. SENNATT,
Attorneys for Respondent.

[Endorsed]: Filed August 17, 1951.